Comet Corporation *and* Local 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and The Shop Committee of Comet Corporation at Albion, Indiana, Party of Interest

Comet Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Cases 25-CA-8243, 25-CA-8387-1, 25-CA-8387-2, and 25-CA-11349

May 28, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 28, 1981, Administrative Law Judge Robert G. Romano issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and both the General Counsel and Charging Party UAW filed answering briefs to the Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Comet Corporation, Albion, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, dissenting in part:

The Administrative Law Judge, affirmed by the majority, found that the General Counsel made a *prima facie* showing sufficient to support the inference that the Respondent's layoff of welder Martin McCoy was motivated by its unlawful purpose of reaching union activists Carter and Hickman for layoff in order of seniority, McCoy being less senior than they. The Administrative Law Judge also observed that under *Wright Line*,[2] once that *prima facie* case was established the burden shifted to the Respondent to demonstrate that the same action would have been taken even in the absence of the unlawful reason.[3] However, in analyzing the Respondent's defense and concluding that the *prima facie* case had been rebutted, the Administrative Law Judge and the majority have distorted the *Wright Line* test.

The Board's decision here relies first on the fact that McCoy's union activity was no greater than that of another laid-off welder whose layoff was not alleged to be unlawful. But McCoy's union activity is beside the point. The *prima facie* case is grounded on the Respondent's desire to rid itself of other employees who were union activists. McCoy was only a pawn in the Respondent's game, and the status of the other welder is not before us. The Board also relies on the Respondent's showing that it had economic grounds for some layoffs in the plant. However, the Respondent's burden was to establish that economic grounds alone would have resulted in the layoff of McCoy in particular. The state of the record is such that to cross from the general showing to the particular requires a leap of faith. For the most the Respondent has established, consistent with the Administrative Law Judge's factual findings, is an uncertainty as to whether McCoy would have been laid off had the layoff been shaped by purely economic considerations. Thus, the Respondent has not established its defense; it has not rebutted the *prima facie* showing that the unlawful reason was at least a contributing cause. That is where things stand from a formally legal perspective. On equitable grounds, the situation is the familiar one in which uncertainty exists as a result of a party's wrongdoing, in this case the (unanimously found) unlawful scheme to manipulate the layoff so as to reach Carter and Hickman. This uncertainty is not to be resolved in favor of the wrongdoer. Accordingly, I would find that the layoff of McCoy violated Section 8(a)(3) and (1) of the Act.

I agree with the majority in all other respects.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[3] There is some question as to whether *Wright Line* is applicable here, since it provides a rule only for dual-motive cases. Here, the initial question is whether the motivation was the Respondent's desire to be rid of the union activists or the economic considerations justifying a layoff. But, since there was an economic justification for a layoff, the case may properly be treated as, at least potentially, a dual-motive case. The ultimate determination is whether the decision to include certain employees in the layoff was motivated solely by economic considerations or whether the unlawful reason was at least a motivating, operative factor.

DECISION

STATEMENT OF THE CASE

ROBERT G. ROMANO, Administrative Law Judge: These consolidated case proceedings were heard before me at Albion, Indiana, on various dates in March, April, and May 1980. The original charge in Case 25-CA-11349 was filed on September 21, 1979,[1] by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein UAW or the Charging Party) against Comet Corporation (herein Respondent or Employer); and a complaint thereon issued on October 26 against Respondent, with The Shop Committee of Comet Corporation at Albion, Indiana (herein The Shop Committee), therein appearing as a Party of Interest. The complaint alleged various violations of Section 8(a)(1), (2), (3), and (5). An order consolidating said complaint in Case 25-CA-11349 with a *reissued* consolidated complaint, as amended, in Cases 25-CA-8243 and 25-CA-8387 (1-2) was issued contemporaneously. Respondent, by answer filed October 30, has denied the commission of any unfair labor practices.

The original charge in Case 25-CA-8243 had been filed against Respondent earlier on September 7, 1976, by Local 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein Teamsters Local 414); and a complaint thereon had issued on October 27, 1976, alleging various violations of Section 8(a)(1) and (3), which by answer filed November 23, 1976, Respondent had earlier denied. In the interim original charges in Case 25-CA-8387 (1-2) were filed by Teamsters Local 414 on October 26, 1976; and thereafter an order consolidating cases and a consolidated complaint in Cases 25-CA-8243 and 25-CA-8387 (1-2) issued on November 26, 1976, alleging various violations of Section 8(a)(1), (2), and (3) of the Act, which by timely answer filed November 30, 1976, Respondent again had denied. By an amendment to complaints dated December 21, 1976, *inter alia*, The Shop Committee was added as a Party of Interest in those earlier consolidated proceedings. On January 28, 1977, the charge in Case 25-CA-8243 was amended to allege additional violations of Section 8(a)(1) and (3). On February 2, 1977, an informal settlement agreement (with nonadmission clause) was entered into by the parties[2] which was approved by the Acting Regional Director on February 9, 1977. An order withdrawing approval of settlement agreement and reissuing of the consolidated complaint as amended in Cases 25-CA-8243 and 25-CA-8387 (1-2) issued on October 26, 1979. By amendment to complaint in Case 25-CA-11349 dated February 12, 1980, *further* allegations of violation of Section 8(a)(1) and (2) were added; and by second amendment to consolidated complaint in Cases 25-CA-8243 and 25-CA-8387 (1-2) which also issued on February 12, 1980, *inter alia*, further allegations of conduct violative of Section 8(a)(2) were added; and specific grounds were alleged upon which the settlement agreement was being vacated and set aside. By answers filed respectively thereto on February 18, 1980, Respondent has denied the commission of any unfair labor practices. On March 7, 1980, counsels for the General Counsel and Respondent entered a stipulation in substance and effect reinstating the terms of the prior settlement agreement in Cases 25-CA-8243 and 25-CA-8387 (1-2) with regard to all allegations of Section 8(a)(3) and (1), saving only as to matters relating to allegations of alleged violation of Section 8(a)(1) and (2) in regard to The Shop Committee. Teamsters Local 414 has not participated in the instant proceedings.

Upon the entire record,[3] including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel on August 25, by Respondent on August 13, and by Charging Party UAW on August 25, 1980, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Jurisdiction is not in issue. The Employer, a State of Washington corporation, has a principal office and place of business in Spokane, Washington, and a facility at Albion, Indiana, where it is engaged in the manufacture, sale, and distribution of semi-truck trailers, van bodies, and related products. Only the Respondent's Albion facility is involved herein. The various complaints allege, and Respondent by Answer, admissions and Stipulations has conceded, and I find that during all material times that Respondent was an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. On the basis of the record evidence before me I as readily conclude and find that Teamsters Local 414 and UAW, during all times material herein were labor organizations within the meaning of Section 2(5) of the Act. The complaints allegation of labor organization status of The Shop Committee, as to which Respondent by answer has plead insufficient knowledge, and thus effectively has denied, but in brief would affirm as of 1978, is considered *infra*.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A preliminary scan of the issues:

The issues presented by complaint in Case 25-CA-11349, as amended, appear to be:

1. Whether Respondent has unlawfully interrogated its employees as to their own union membership, activities, and desires, and as to that of other employees, in violation of Section 8(a)(1) of the Act by the conduct of its agent Rayford T. Blankenship at its facility in late July or early August.[4]

2. Whether Respondent, in violation of Section 8(a)(1) of the Act, has discriminatorily published in August and thereafter maintained and enforced certain employee rules of conduct; and whether certain specific such rules

[1] All dates are in 1979 unless otherwise stated.

[2] It is not clear of record whether The Shop Committee as Party of Interest was signatory to the settlement agreement.

[3] The General Counsel's unopposed motion to correct the record filed August 25, 1980, is granted.

[4] An additional allegation of interrogation by supervisor and agent Bon Tucker at Respondent's facility in early August was withdrawn by the General Counsel.

independently constituted unlawfully broad no-solicitation, no-distribution, and no-access rules in violation of Section 8(a)(1), *viz*: (a) its published rule prohibiting "Soliciting, collecting contributions or distribution of literature, written or printed matter of any description on Company premises without specific Company authorization"; and (b) its published rule prohibiting "Unauthorized entry into Company property."

3. Whether Respondent's truckdrivers (4) should be excluded, as is urged by the General Counsel and UAW, or should be included as is urged by Respondent, in an appropriate unit of employees otherwise agreed by the parties to exist for purposes of collective bargaining consisting of:

> All regular full-time and all regular part-time production and maintenance employees of the Employer at its Albion, Indiana, facility; but excluding all office clerical employees, all salesmen, all professional employees, all guards and supervisors as defined in the Act;

and in connection with the composition of said unit whether the unit would also include K. Wogoman and R. Winebrenner, initially hired as temporary summer students.

4. Whether as of August 16 a majority of the employees in the aforesaid unit as may be determined appropriate herein have validly designated the UAW as their collective-bargaining representative; and whether, upon request, Respondent has refused to recognize and bargain with UAW in violation of Section 8(a)(5) and (1) of the Act; and whether in thereafter unilaterally publishing the aforesaid employee rules of conduct Respondent has independently violated Section 8(a)(5) and (1) of the Act.

5. Whether Respondent on August 31 has discriminatorily indefinitely laid off, discharged, and refused to reinstate its employees Gregory Carter, Hugh Hickman, and Martin McCoy in violation of Section 8(a)(3) and (1) of the Act.

6. Whether commencing on an unknown date in August and continuing to date Respondent has recognized and bargained with The Shop Committee as the exclusive bargaining representative of its production and maintenance employees in matters pertaining to, *inter alia*, safety, compensation, employee benefits and disciplinary procedure, notwithstanding that The Shop Committee has not represented the uncoerced majority of the production and maintenance employees, and has not requested such recognition; and further, notwithstanding that a real question concerning representation then existed; and whether Respondent on September 17 urged and permitted The Shop Committee to solicit signed authorizations from Respondent's employees at its facility on working time; all in violation of Section 8(a)(2) and (1) of the Act.

7. Additional issues presented by the instant consolidated proceedings are whether the informal settlement agreement of February 9, 1977, reached in earlier consolidated complaint proceedings in Cases 25-CA-8243 and 25-CA-8387 (1-2) has been appropriately vacated and set aside by virtue of the certain conduct alleged in succeeding paragraph 9, and/or by virtue of all of the above conduct.

8. Whether as therein, and now remainingly alleged, Respondent has heretofore violated Section 8(a)(2) and (1) of the Act by the certain conduct of its supervisor and agent (former) Plant Manager Gordon Blake Ross,[5] in initiating, forming, sponsoring, and promoting The Shop Committee at Respondent's Albion facility; in thereafter rendering aid, assistance, and support to it; and in interfering with the operation and administration of The Shop Committee by:

(a) The alleged specific conduct of Plant Manager Ross on May 10, 1976, with the advent of, and again on July 20, 1976, with the renewal of, Teamsters Local 414 organizational effort, in sponsoring and urging employees to choose The Shop Committee as their bargaining agent;

(b) Permitting and urging The Shop Committee to conduct meetings at Respondent's Albion facility during work on July 20 and 21, 1976, and by paying employees for their attendance thereat;

(c) The alleged conduct of Plant Manager Ross, of Shop Supervisor Robert Hasserd, and of Shop Foreman Ronald Huck in attending and participating in the meetings of The Shop Committee; and,

(d) Since May 10, 1976, recognizing and meeting with The Shop Committee for purposes of collective bargaining; and

9. Whether, as now alleged by February 12, 1980, amendment to said earlier consolidated complaint proceedings in Cases 25-CA-8243 and 25-CA-8387 (1-2), Respondent has further violated Section 8(a)(2) and (1) of the Act:

(a) By supervisor and agent Plant Manager Hays, in September 1978, sponsoring and urging Respondent's employees to choose The Shop Committee as their collective-bargaining representative in regard to safety and discipline; and

(b) By urging and permitting The Shop Committee to conduct meetings at Respondent's Albion facility, during working hours, and by paying employees for such attendance; and

(c) By Respondent's supervisors and agents thereafter attending and participating in the meetings of The Shop Committee; and

(d) By recognizing and bargaining with The Shop Committee since September 1978 in regard to safety and discipline, notwithstanding The Shop Committee had not been certified, did not represent an uncoerced majority, and did not request such recognition.

10. Finally, whether under all the attendant circumstances to be determined herein, a remedial bargaining order is warranted in any event.

A. *Background*

1. Respondent's operations

Respondent's corporate headquarters are located in Spokane, Washington. Respondent operates manufactur-

[5] Gordon Blake Ross was the plant manager through September 1977. Robert Hays became plant manager in January 1978.

ing facilities in Spokane, and also in Albion, Indiana, where it is engaged in the business of the manufacture of various type vans and trailers produced to specifications of customers in the trucking industry or for dealers selling to entities who are engaged in hauling bulk freight. Only Respondent's Albion division or facility is involved in this proceeding.

The Albion plant is approximately 30,000 square feet. Raw materials, e.g., steel and aluminum, are initially purchased from suppliers and hauled to the Albion facility by Comet-employed drivers, who drive equipment leased to Comet by Gage Transport Company, Inc. (herein Gage Transport), and who also deliver vans and trailers when produced to Respondent's customers. Raw materials are unloaded, usually by material handlers who bring the materials to assembly points, and/or to a parts shop for fabrication of parts which are either subsequently to be welded in a weld shop into certain components (running gear, landing gear, king pin, rear frame, pintle box and miscellaneous parts, or "sills") for inclusion in assembly or final assembly process, or the fabricated parts are delivered directly to assembly lines, or initially to certain subassembly work areas prior to entry into the basic assembly line process. The latter leads into a final assembly where, *inter alia*, certain electrical, air, liner, and final weldwork is performed. In issue is whether a certain axle and brake assembly operation was a separate classification (or department) for layoff purposes on August 31 as contended by Respondent or whether its occupant at that time, "Skip" E. Altimus, was theretofore essentially a welder in the weld department as contended by the General Counsel and UAW. There is also a two to three man maintenance department in addition to the material handling department, both being considered by the Employer as nonproduction or indirect labor, as are Respondent's trucking operations.

2. Respondent's management and supervisory hierarchy during material times

The Albion manufacturing division opened November 1975. Gordon Blake Ross was plant manager during the period from December 1975 through September 1977. On approximately January 1, 1978, Robert J. Hays became the new plant manager. Employed since 1978, Steve Cervi is currently the plant superintendent. Since 1976, Charles Dorgan has been employed apparently as a combined officer, purchasing, and personnel manager. Dorgan also performs certain supervisory functions over material handling and traffic, including supervision of Respondent's truckdrivers.[6] R. Reinhardt is a resident engineer in charge of quality control. General Foreman Bon Tucker supervises both parts department and weld department; and he reports directly to Superintendent Cervi. Currently Darrell Johnson is general foreman of assembly department and final department though his primary responsibility is for assembly. Al Gaerte is foreman in final assembly department only. Both Tucker and Gaerte report to Cervi. The two to three maintenance department employees under a leadman, Burlie Jones, report directly to Cervi. In the light of Respondent's admissions, party stipulations, and evidentiary support in the record, I find that the above managers and general foreman/foremen during all times material herein were supervisors and agents of Respondent within the meaning of Section 2(11) and (13) of the Act; and I further find that Robert Hasserd, Clarence Barnhardt, and Ronald Huck, employed as foreman theretofore, *viz*, in 1976, were similarly supervisors and agents of Respondent during that earlier material time as well. It was also stipulated and I find that during material times Rayford T. Blankenship was Respondent's agent.

Excluding for the moment, consideration of the six (6) employees whose placement in the above production and maintenance unit found appropriate is in issue, *viz*, four drivers and two alleged summer help employees, the parties have stipulated and I preliminarily find that the complement of Respondent's above production and maintenance unit in the material period of August 16, 1979, was 99 employees, saving only further the determination of the status of Thomas M. Gage, to be discussed *infra*.

B. *The UAW Organizational Activity*

1. Initial contacts of welders Gregory Carter and Hugh Hickman

On July 16, employee Gregory Carter, employed as a welder in the weld department, contacted UAW International Representative Jack L. Albright concerning the possibility of the UAW organizing the production and maintenance employees at Respondent's Albion facility. Carter was given a "single purpose" UAW authorization card[7] with instruction to arrange a meeting of interested employees. Carter had no phone. Hugh Hickman, another welder in the weld department who did have a phone, was also interested in the Union. Carter signed his authorization card on July 18 and mailed it back to the Union which was received on July 23. On that day, further contact of the Union was had with Hickman and Carter and final arrangements made for the first union meeting with interested employees to be held that afternoon at Greg Carter's trailer home.

[6] Hays related that truckdrivers report directly to Dorgan. In passing, it is observed that, prior to hire, new and/or unknown driver applicants are tested for driving ability by Tom M. Gage, employed by Respondent as a driver-dispatcher. Drivers frequently receive their dispatches from Gage. Thomas *M.* Gage, not to be confused with his nephew Thomas E. Gage (the latter employed as an assemblyman), is also president and owner of Gage Transport. The status of Tom M. Gage is discussed further *infra*, with the discussion of the issue of placement of the drivers in the unit.

[7] The authorization card used by the union herein is described by Albright as being a "pure" card. The card itself provides on one side "I [with place for printed name insert] authorize UAW to represent me in collective bargaining" along with other data to be filled in, including employee signature. The other side of the card unequivocally provides:

> This card will be used to secure recognition and collective bargaining for the purposes of negotiating wages, hours, and working conditions.
>
> You have the right under federal law to organize and join a union.
>
> By joining the UAW you have the support of one of the world's largest unions.

There is no reference on the card itself to an election; nor in a brochure which accompanied subsequent card handouts, discussed *infra*. I readily find that the card utilized herein was a single purpose card authorizing the Union to represent the signer thereof in collective bargaining in regard to wages, hours, and terms and conditions of employment.

2. The first union meeting on July 23

Eleven Comet employees attended this first union meeting held at Carter's home at approximately 3:30 p.m.; and all signed affirming their attendance *and* participation in this UAW organizing meeting. In addition to the two welders present, Carter and Hickman (both alleged discriminatees herein), there were also six assembly line employees, two material handlers, and Randy Gunder, a leadman in final (assembly) department. The meeting lasted about 2 hours during which time union matters were discussed. Albright testified credibly that *inter alia* he told this group of employees that the signing of the authorization cards would indicate their desire to have the UAW represent them with their Employer. Carter additionally corroborated that they were told the cards were going to be used to show majority standing, at which time a letter would be sent to the Company asking Respondent to recognize their majority status; and that if Respondent refused to do so the "NLRB" would be petitioned for a vote. All the employees were given single purpose authorization cards which they all signed at that time (except leadman Gunder); and all agreed to act on an inhouse organizing committee. I find at this time the Union began its organizing campaign with 10 valid authorization card designations.[8] Albright instructed the organizing committee members as to their conduct of an organizing campaign; and distributed to them organizing committee buttons and cards. Albright also gave Gregory Carter, who agreed to head up the committee, approximately 100 single purpose authorization cards with a brochure containing asserted benefits of UAW representation of employees for collective-bargaining purposes. Inasmuch as Carter had no phone, Hickman agreed to be the phone contact to and from Albright. Each employee who agreed to serve on the organizational committee was given an organizational kit. Union decals and union T-shirts were also made available to them. Albright sent a letter (dated July 23) to the Employer advising of the commencement of the UAW organizational activity among Respondent's production and maintenance employees and gave general notice (without specific employee identification) that employees would be serving on the "UAW In-Plant Organizing Committee." Albright admonished the organizing committee not to begin their organizational activity at the plant until the Employer had had time to receive the Union's letter. Employees thereafter began their organizational activity at the plant on July 25.

[8] Signed at this time were: Gordon and Gregory Carter, Kevin Chester, Jeff Coplin, Kevin Ellet, Thomas E. Gage, Hugh Hickman, Randy King, Randy Marks, and Stanley Starcher, I note the cards of Randy Marks and Kevin Ellet were entirely printed. Nonetheless Marks identified his own authorization, and witness of the execution by Kevin Ellet of a blank card was confirmed by Carter and others in attendance. John P. Stout, whose card is also dated July 23, 1979, did not attend the July 23 meeting, and from his testimony of receiving it in the parking lot I am satisfied and I find Stout has simply misdated the card he received on July 25 and turned in the next day.

3. General overview of the subsequent card solicitations and plant union activity

Card solicitation by certain members of the organizing committee began at the Albion facility on July 25; and continued through August 15 by which time the Union had in its possession as is shown herein 62 single purpose signed authorization cards, a clear numerical majority.[9] The card solicitations had been carried out on a daily (work) day basis, and almost, but not exclusively on nonwork time; i.e., before 6 a.m. shift start, at lunchtime, and after shift closing in the parking lot, and usually near the employees' entrance.[10]

Starting August 1, and until layoff-discharge on August 31, Gregory Carter (alone) wore two yellow UAW decals (3 inches in size) one affixed on either side of his welding helmet; and Hickman wore a UAW organizing committee button on his hat to work and on his person while at work. Carter had additional UAW T-shirts from a prior campaign in which his wife was involved with the UAW; and Hickman had two union T-shirts. The record convincingly established that Carter and Hickman wore UAW T-shirts before others did, did so more continuously, 4–5 days a week; and I thus find, essentially did so all the time prior to their layoff-discharge on August 31. Carter and Hickman testified (and it was undenied by Gaerte) that Supervisor Al Gaerte had observed, for some 5–10 minutes, Greg Carter and Hickman soliciting cards (and I find) on the first day of their solicitation at the plant in the parking lot. Plant Manager Hays also admitted that he had observed union cards being handed out in the lot, and I find would reasonably have observed Carter doing so early in the campaign;[11] and in any event Hays, who on regular occasion passed through the plant, also acknowledged that he had observed both Carter and Hickman wearing the UAW T-shirts along with certain other employees. However, as related *infra*, Carter was particularly vocal and visible in his prounion advocacy, indeed engaged in a direct confrontation with agent Blankenship in the presence of Hays, and to Hays' visible displeasure, on the occasion when Blankenship delivered an antiunion speech to Respondent's employees assembled at the American Legion Hall (across the street from the Albion facility), the legality of which Carter in certain aspects questioned. In a front seat on that occasion was Hickman, also wearing a committee button and union T-shirt; and it is admitted

[9] This finding is based on actual cards evidenced herein; despite Albright's recollection he had received as many as 67 cards, which is noted as not necessarily inconsistent with the number of cards offered to establish a majority of current employees at a certain time.

[10] Hickman however acknowledged that he was involved in some union activity in the plant. Thus Hickman relates that one employee, Reginald Lazar, had inquired of him about a card in the weld shop, but Hickman told Lazar that he would give him a card at breaktime, which he did. However, Hickman also returned their signed cards (dated July 25 and 26, respectively) to him in the weld shop. Hickman also acknowledged that he had given a card to welder Darrel DeLong in the weld department who signed it and returned the card (dated July 30) to him immediately.

[11] This finding is based on Hays' testimony that he observed employee Caldwell signing a card. Greg Carter had testified credibly that he gave a card to Caldwell and identified the card of Mark Caldwell (dated July 26) as returned to him.

that on this occasion management officials had identified some of the Union's (employee) organizers to Blankenship.

Of 51 additional cards obtained between July 25 and August 15, Carter has testified to a personal solicitation/receipt of 23 additional cards, and Hickman to such on 10 additional cards, thus overall, both accounting for solicitation/procurement of two-thirds of the additional cards obtained by the committee in the period from July 25 through August 16. Contrary to Respondent's contention in brief, this record has clearly established beyond any reasonable question that Carter and Hickman were the leading union adherents[12] of which (I find) Respondent was thus well aware prior to their layoff-discharge on August 31.

4. Respondent's initial reactions, Respondent's antiunion speech of July 30[13]

Upon receiving notice that the UAW would be conducting an organizational campaign among its employees, Plant Manager Hays promptly reported that development to Respondent's president; and within a few days had contacted Labor Consultant Blankenship for assistance. A meeting of all employees on working time was promptly arranged and held at the local American Legion Hall which is located directly across the street from Respondent's Albion plant. Hays relates that the meeting of the employees was called because they wanted to make sure that the employees were properly informed of what was going on. The meeting began an hour before normal quitting time and lasted about 2 hours. Employees attending were paid overtime for the extra hour.

Blankenship sat at a head table with Plant Manager Hays. According to Greg Carter, Blankenship began the meeting by stating to the employees that he was appearing before them, not to represent the Company or the Union but to present the *pros and cons* of unions; but Carter testified that Blankenship had then gone on to a totally negative discussion of the Union. Hays relates that he introduced Blankenship to the employees and that Blankenship had mentioned the rights of employees, and of the Company and the Union. While I credit the latter, I also credit Carter, corroborated by Hickman, that Blankenship spent the first hour essentially then relating negative reasons for the employees having a union—in short, delivered an antiunion speech to all the assembled employees.[14] All agree that at some point there followed a question-and-answer period.

a. *The alleged interrogation of employees by Blankenship*

Despite availability of other witnesses who were in attendance at this meeting, the General Counsel offered only the testimony of Greg Carter and Hickman in support of this allegation. Carter's testimony was that he seemed to recall, though he could not recall whether such occurred during the speech part or question-and-answer part of Blankenship's speech, Blankenship say: "Can anyone tell me why they want a union? It seems to me there's an open channel of communication between The Shop Committee and Management." However, on cross-examination his recollection thereon was then disjointed, was acknowledged to be not verbatim, and rendered his direct testimony in that area much less convincing. Carter also had related that there were responses to Blankenship's question, which would suggest the same had occurred as part of the question-and-answer session; but Carter could then not recall any subject response or speaker specifically.

Hickman, on one occasion, in relating that Blankenship had spoken about several union contracts that he knew about, related in conjunction therewith that to his knowledge of unions he could not see why employees needed a union in the shop because of the lines of communication that employees had with the management, that he did not understand what kind of a problem that the employees had that was so great that they needed outside interference. Hickman did not confirm a reference to The Shop Committee. Hickman also could not recall when the latter was discussed; but on cross-examination stated he did not believe Blankenship had paused; thus suggesting, when considered with union contract discussion connection, that such remarks were a part of Blankenship's antiunion speech, and thus the more likely reasonably recognizable by employees as but an expression of opinion or viewpoint of Blankenship offered to persuade but less likely to be viewed as an interrogation of them to be some time later responded to by them. However, Hickman did also testify on direct that there was a question addressed to employees, though he preliminarily stated it was one that he could not remember word for word, which was then described by him as being—"why we thought we needed a union in Comet, and that if anyone could tell him, you know, why we needed a union—or why we thought we needed a union." Hickman also could not testify as to a reply of anyone, if any.

It is uncontested that Blankenship had announced to the employees prior to his speech that he was going to tape the meeting for his own protection. At instant hearing Blankenship did not testify in denial of any of the above versions of Carter or Hickman, testifying rather in support only of an offer of the tape made of the meeting. On objection, the tape and a partial transcript thereof

[12] All cards procured by the four to five committeemen active in card solicitation were returned to Carter, who delivered them to Albright.

[13] There is much conflict in the evidence as to whether Respondent's meeting was on July 30, or on July 31 immediately before an open union meeting held at Albion Park. I resolve the conflict on the basis of Dorgan's testimony based on timecards of employees that indicated payment was on July 30 for their attendance at the company meeting. It would serve no useful purpose to relate all the evidence either that additionally supporting such, or contrary, beyond observing that frequently the latter was based on employees talking on July 31 about the recent company meeting, and there is no question that its effects were to be observed in the question-and-answer session of employees with Albright on July 31, thus contributing to a relation of one to the other, and, in my view, no doubt to confusion on the part of many as to their being of same date of occurrence.

[14] Hays conceded there were discussion on strikes and the provisions of the Union's constitution and/or bylaws, etc.; and Hickman recalled that Blankenship had spoken (unfavorably) about several union contracts that he knew about.

were rejected *inter alia*, and primarily for conceded containment in the tape of substantial segments that were inaudible, garbled, and without speaker identification and/or gaps. On request the exhibit was placed in the rejected exhibit file. Respondent's renewed request for my review of same is denied; and said exhibit has not been considered herein. However, I do observe that Blankenship did testify that the tape was not tampered with by him, nor to his knowledge by anyone intentionally, or at his direction. Blankenship did also appear to concede that it could not be proven by experts, either way, whether the tape had been tampered with. Blankenship has set forth the circumstances of the tape's production, attempted transcription, including secretarial mishap. Having fully considered all these particulars, I decline to draw any inference from the defective condition of the tape, or deficiencies of the transcript thereof.

Hays however did testify in this area. Thus Hays' recollection was that the question-and-answer session had only lasted about 15–20 minutes; and Hays denied that Blankenship had asked employees any questions, testifying in that regard: "No, you [Blankenship] made a lot of statements that people should ask themselves, or should consider, or be aware of, but no, I didn't hear you ask any questions." General Foreman Tucker essentially corroborated Hays.

b. *The confrontation of Carter with Blankenship and Hays*

At the commencement of the question-and-answer session, Carter first said to Blankenship "so much for the cons of Unions. How about the pros?" Blankenship promptly replied—"there aren't any." Hickman recalled that toward the end of the meeting that Carter had inquired if the meeting was legal. Carter relates that Blankenship said that if anyone had any questions about the legality of the meeting that he would be glad to give the phone number and name of whom to ask for at the NLRB Regional Office in Indianapolis. Carter then asked for the phone number and as Blankenship began to give it, Carter asked him to stop as he did not have any paper. Carter then walked to the head table from his position directly in back of Hickman and asked Plant Manager Hays for a piece of paper. Carter on this occasion was wearing an extra large UAW T-shirt, with an 8-inch VOTE and 3-1/2-4-inch UAW logo. Carter testified that Hays tore it off violently from a tablet of paper and more or less threw it across the table, with Hickman, however, recalling Hays sort of tore it out of the tablet and slid the tablet across the table. More significantly, Carter's description of Hays' appearance at the time as being that "[h]e was tight lipped, rather flushed, nasty looking is the only way I can put it" was convincingly corroborated by Hickman who described Hays as appearing at the time red in the face, and tight-lipped. Both confirm that when Carter then asked for a pen Hays pulled a pen out of his pocket, but just handed it to Carter. As noted earlier I am convinced and I find that Hays was visibly displeased by Carter's prounion actions and his confrontation with Blankenship in front of the assembled employees.

c. *The question raised in regard to plant rules*

Hickman recalled that one employee, Tom E. Gage, brought up an occasion when he had been sent home for wearing shorts; and Gage asked where the company (dress) rule was, that he had not seen it. Hays responded that company handbooks were being printed up at the printers in Spokane and as soon as they were printed they would be distributed. (A temporary copy was distributed to employees later in August discussed *infra*.)

d. *The question raised in regard to wearing the union T-shirts*

Hays recalled that Hickman had inquired in this meeting about a rumor that if the Union did not get in, that all the people wearing T-shirts were going to be fired; and that Blankenship had promptly replied that was not the case, as it was not legal; and it was not the way they operated.

5. Respondent's dealings with The Shop Committee

a. *Post-settlement evidence of the existence of a Shop Committee as part of a Shop and Safety Committee; and development of same as a labor organization during the period from September 21, 1978, through August 7, 1979*

As was earlier noted Robert Hays assumed his position as plant manager of the Albion facility on January 1, 1978. The pertinent provision of the informal settlement agreement approved on February 9, 1977, entered into during Ross' tenure, in adjustment of allegation that Respondent had rendered unlawful assistance and support of The Shop Committee, a labor organization, provided agreement by Respondent that it:

> . . . would refrain from urging employees to form or join the Shop Committee of Comet Corporation; that the Respondent would withdraw and withhold all recognition from the Shop Committee as the bargaining representative of any of its employees unless and until said Shop Committee had been certified as the collective bargaining representative by the National Labor Relations Board; and that the Respondent would not in any other manner interfere with, restrain or coerce its employees in the exercise of their rights guaranteed in Section 7 of the Act.

It is uncontradicted that from entry of such informal settlement (February 2, 1977) through end of Manager Blake's tenure (September 1977), Respondent had no dealings with The Shop Committee.

On approximately April 11, 1978 (Monday), following prior request of employees, Supervisor Bon Tucker (then general foreman), with the knowledge of Hays, established a Safety Committee. Design and purpose of the Safety Committee as stated in writing to employees was (limitedly) to meet to discuss constructive suggestions on safety, repeated unsafe practices, and safety hazards noted in the plant. The Safety Committee was to meet regularly every month. Tucker designated the plant areas

that would be represented, *viz*, parts department, weld department, east line, west line, final, maintenance, and material handling. Tucker specifically designated leadman Burlie Jones for Maintenance, which department would do the repair and/or corrections. The other designated areas were asked to provide volunteer representatives to the Safety Committee. If an area did not produce a volunteer (and some did not), the most senior man was then asked to serve as the Safety Committee representative for that area. In the period April 11 through September 20, 1978, the Safety Committee met apparently only on April 13 and 27 and June 15, 1978, discussing only safety matters. (Additional meetings for May 19 and July 13, 1978, were scheduled but apparently not held.)

In August 1978, Rick Sherman, then a welder, asked Hays on two occasions if the employees could establish a Shop Committee to present employee complaints. On both occasions Hays *refused*. The establishment and functioning of Respondent's Safety Committee through August 1978 is not claimed violative of the prior settlement agreement of February 7, 1977.

During the week of September 18, 1978, one of Respondent's foremen initiated certain disciplinary action against three employees, citing a violation by them of existing company rules and policies. Angry over what was viewed as inconsistent disciplinary action taken in different plant areas, a number of employees (Respondent contending in brief as much as 70 percent of the work force, but in any event I find a majority) walked out of the plant for a few hours in protest of what they viewed had been an unfair discipline of their fellow employees.

An effort was made by Plant Superintendent Steve Cervi to get the employees engaged in the work stoppage to come back to work. However, the employees refused to do so until Hays came out and met with them. On Cervi's report of that circumstance to Hays, Hays refused to go out, but agreed to meet with a small representative group of employees in his office to discuss the problem. Some 5–6 employees, including welder Rick Sherman and his brother Paul Sherman (then weld leadman), were among the group who at that time were assigned or volunteered to meet with Hays for that purpose. Cervi was also present in the office when they met. Mays started by admitting they had a problem. Rick Sherman said that they wanted the disciplinary action rescinded on the three employees involved; and both employees and management agreed they needed a better set of (local) shop rules which they really did not have. On review of the 30 facts of the incident, Hays concluded that the disciplinary action taken was inconsistent with prior action, and he agreed to rescind it. Hays also agreed to get the Spokane home office to give Albion employees their own rules and policies.[15]

Paul Sherman then mentioned having a Shop Committee to meet with management on such employee complaints, so that their problems could be worked out. Hays, who had twice refused similar urging by Rick Sherman in the past month, on this occasion replied that he thought, "It would be a good idea." However, Hays then said that he wanted to combine the Shop Committee with the existing Safety Committee, so he would not have so many people attending different meetings and so he would not have to meet with both. Rick Sherman testified credibly that Hays also added that Burlie Jones would have to attend all meetings because of the maintenance and safety aspects; and Hays said that the Committee should have a cross-section of the plant, naming the departments that could have a representative, and in so doing combined material handling with another department.

Shortly after Hays' approval, Rick and Paul Sherman returned with three other employees on September 21, 1978, who were later joined by Burlie Jones; and the first meeting of the newly constituted Shop and Safety Committee was then held with Respondent's representatives. In that meeting and subsequent meetings in 1978 there were clearly some but limited committee inquiries made of management, touching on subjects directly relating to terms and conditions of employment, e.g., employee requests for restroom maintenance and improvements in the employees' breakroom area. As early as December 1978 and at least by January 1979, committee inquiries had been significantly extended, *inter alia*, to such subjects as for a pension plan, a credit union, and (by February) for employee washup time and parking lot. (This finding is based on Hays' testimony that minutes dated 1-8-79 were in part a photostat of a prior meeting, thus seemingly a December 1978 meeting.) More specifically, the minutes of the meetings of September and November 1978 reveal that with exception of restroom and break area requests (and arguably an inquiry as to pay phone availability for shop employees in November 1978) items raised were predominantly, indeed almost exclusively, on safety and/or production-maintenance related items. Commencing in 1979, though a clear primacy of safety and/or production-maintenance related items continued, other items began to appear raised for discussion with a discernibly greater frequency. Thus at least commencing in January 1979, in addition to the above-noted subjects (break area, restroom, pay phone) there appeared as agenda items: credit union, pension plan and for air vent fans in final and weld departments; and in February request for washup time and (employee) parking lot pavement.

However, it essentially was not until April that Respondent's answers on these subjects were recorded in the minutes and a clear report to employees was made, via minutes posting. Thus, in April, there is report of one vent in weld being completed, and a second to start as soon as possible, a new break area to be started soon. An Employer answer is reported in regard to request for pay phone and pension plan as essentially not to be made available to employees at this time (April); and any washup period to be granted, (only) on a man-to-man basis with an involved foreman. It was reported that quotes continued to be taken on an employee paved parking lot. However, it is both notable and significant that in regard to the subject of plant rules of conduct (which were of initial concern to employees in September 1978) it was reported in the April 12, 1979, minutes

[15] The foregoing findings are based on credited testimony of Sherman, Hays, and Cervi to the extent mutually consistent.

only that rules of conduct would be given to the shop employees as soon as an approved copy was received from Spokane. There was no prior discussion of the *content* of such rules between Employer representatives and employee committee members, prior to August 1979, though committee members from time to time made inquiry thereon. I find there was *no* bargaining on shop rules during this entire period.

There is a dispute as to whether The Shop Committee functioned at all in the period from April to August 7. In contending that it did not, the General Counsel relies heavily on the absence of any minutes theretofore regularly kept for such meetings when held. Hays testified, with convincing documentary support, that in 1979 he had an ongoing oral and written discourse with Spokane concerning the development of shop rules for Albion employees. Hays also asserted rules had developed to the point that there were discussions on same with The Shop Committee in May and June. Although Angel at one point related there was earlier discussion he testified credibly that The Shop Committee reviewed the rules only once before distribution and, upon review of August 7 minutes, clarified the time as being August 7. None of the other members of The Shop Committee corroborated Hays. In the absence of documentation (minutes), I credit Hays' recollection of discourse only to the extent corroborated by Angel and the minutes. Moreover, I do not credit Hays' other recollections that prior existing Employer shop rules (as opposed to safety rules) had remained posted in the plant in the light of the major and general unawareness of such by employees.

b. *Respondent's upgraded dealings with The Shop Safety Committee on August 7, 1979*

The minutes of August 7, 1979, meeting of The Shop Safety Committee shows Hays and Cervi present, with T. Angel, Burlie Jones, and L. Coe present (for Dazey who was on vacation); and newly appearing thereon were R. Detweiler and D. Slone. These minutes record a decidedly different format and tone. For the first time *old* business is distinguished from *new* business and as much as one-half of agendaed old business addressed nonsafety items. Subjects covered are the cleaning and painting of restrooms, with report of one being half done and the other in process; hookup of a second vent fan in the weld shop; renewed attempts to be made on a credit union; renewed consideration to be given to a washup period at the end of shift; specific details of an employee parking lot to accommodate 58 cars and 10–15 motorcycles, on a first-come first-serve basis, and with arrangements made to accommodate overflow in the VFW parking lot across the street; and, as noted, specifically in regard to rules of conduct, notation that "They have been reviewed with the Committee to make certain all points clearly understandable." (I also credit Angel that handbook draft was reviewed.)

Safety items continued to predominate on new business but even then with notable provision for future discussions of (some) significant subjects in: a program for certification of welders; a statement on work hours and company policy on overtime and workday limit; and a statement on company policy on work by leadmen, and by supervisors; change of the company doctor; janitorial work assignments; and a request for a substitution for absent tow motor operator. Before passing on to review of the Shop Safety Committee meeting held on September 5, I observe the pertinent UAW and Respondent activities in the interim.

c. *The UAW's interim demand for recognition and commencement of bargaining; Respondent's refusal of posted certified mail*

Additional card solicitations which began on July 25 continued through August 15, with the Union by that time having procured 62 authorization cards. Having attained a numerical majority of single-purpose authorization cards in the sought unit of production and maintenance employees, the UAW promptly sent a letter (dated August 16) advising of its majority designation as exclusive representative, of all production and maintenance employees "for the purpose of collective bargaining in respect to rates of pay, wages, hours, and other terms and conditions of employment, to become effective immediately"; offered to establish its majority position by impartial check of its authorization cards; requested institution of negotiations; and cautioned against Respondent's negotiating "with any person or organization presuming to act as agent for, or in behalf of, any such employees." The said demand letter was delivered to Respondent on August 17, by posted certified mail, which was promptly refused by Respondent's agents, pursuant to earlier direction of Hays on advice of Blankenship. The refusal was on the specific basis that the letter would be likely to contain just such union demands and notices.[16] I conclude and find Respondent is legally chargeable with the service of same, and thus with notice of its contents. Upon postal return to it of the refused demand letter, the UAW promptly petitioned for an election on August 23, 1979.

d. *Respondent's distribution of a temporary copy of Comet Corporation's "Employee Handbook—Albion Plant"*

On an unspecified date (but I find) in late August[17] a new but temporary employee handbook, entitled "Comet Corporation, Employee Handbook—Albion Plant," was distributed to employees; and as presently pertinent under "10. Shop Safety Committee" therein provided:

> Comet employees are represented in matters pertaining to safety, compensation, employee benefits, disciplinary procedure (sic), etc., by representatives elected by their fellow employees on a department basis.

[16] It would serve no useful purpose to review the testimony thereon, particularly Hays, since admissions and concessions eventually were made of record by Respondent's supervisors and agents substantially to the above effect. I do observe that, on this matter, Hays' testimony was initially neither frank nor candid.

[17] The Shop Safety Committee minutes for the meeting of September 5, 1979, confirm in regard to rules of conduct (also contained therein) that "Temporary copies have been issued to employees. Printed books should be available in about two (2) weeks. R. Hays."

1. Parts and Material Handling
2. Welding
3. Line Assembly
4. Final Assembly
5. Maintenance

Committee meetings with management are held monthly. Input from employees is to be channeled thru committee members.

Departmental or plant employees meetings with Committee and Management will be scheduled upon request and approval by shop [sic] Safety Committee and Management Representatives.[18]

e. The alleged publication, maintenance and enforcement of an unlawful "no access" rule; and overly broad and thus unlawful "no solicitation and no-distribution" rules

The aforesaid temporary copy of the "Employee Handbook—Albion Plant" also provides in number "8. Employee Rules of Conduct" as follows:

A. Major Rule Violation . . . .[19]
13. Unauthorized entry into Company property.

B. Minor Rule Violations: . . .

4. Soliciting, collecting contributions or distribution of literature, written or printed matter of any description on company premises without specific company authorization.

Respondent essentially defends that the above were rules that existed, in prior corporate Shop Rules applicable at Albion plant, and posted to employees well before August 1979. As noted, in the face of substantial employee testimony to the contrary I have not fully credited Hays in that regard. Respondent also defends it never prohibited such actions, with the General Counsel contending that Respondent did not affirmatively show that it did not enforce these rules.

f. Continued upgraded dealings with The Shop and Safety Committee; and related assistance considerations

The next meeting was held on September 5. In the interim on August 31 there had been a layoff of 22 employees. The General Counsel does not contest that economic grounds existed for a general layoff at that time, but does contend that welders Carter, Hickman, and Martin McCoy were discriminatorily *selected* for such layoff, discussed *infra*. The minutes of the meeting of September 5 reveal that the same individuals as in the prior meeting were again in attendance; and the meeting followed the same format. There were continued reports and discussions on the above old business subjects of the August 7 meeting, *inter alia*: possibilities for a change of company doctor; parking lot marking; and promise of credit union information presentment in the future. Under new business there appears a proposal for a third week of vacation after 5 years; discussion of employee abuse of breaks; and layout of the break area.

A representation hearing on the Union's petition had been scheduled and was held at Kendalville, Indiana, on September 14, and again on September 18. Hays acknowledged that Committeemen Angel, Best, Dazey, and Jones attended hearing on both days; and that they were all paid by Employer while they were in attendance, though none were under subpoena by the Employer. (Angel received his regular pay while in attendance at the instant proceeding.)

On apparently September 17 (Monday) a meeting of all employees as held on company premises, at request of certain members of The Shop Committee made of management, which was promptly approved by the latter. Notices of same were posted on the buletin boards. The meeting was significantly scheduled and held one-half hour before normal quitting time of employees. Employees were thus paid by the Employer for their time of attendance.[20] Angel testified that his understanding of the purpose of the meeting was to afford employees an opportunity to sign a petition authorizing The Shop and Safety Committee members to attend the representation case hearing and to report back thereon to the employees. At the hearing held the next day on September 18, Blankenship urged that intervention of The Shop Committee should be allowed in that proceeding and that it should be afforded a place on the ballot.

The next meeting was held on October 8 with Hays, Cervi, and Tucker present for management, and with L. Ellet appearing as acting for Angel, with Dazey back, but with D. Slone not attending and a new employee, G. Best, appearing. There was continued report and discussion on restrooms, and on a washup period (with a 5-minute washup period eventually promised in a later November 1 meeting, and made effective at end of shift, in December 10 meeting); continued investigation of credit union possibilities (with attempt in November 1 meeting to align with other companies; and report in December of continued lack of success, but with effort promise to be continued; notice of change of company doctor; notice of an in-house testing program for welder certification; 3 weeks of paid vacation to be provided after 10 years; discipline for unauthorized use of break area and vending machines; and under new business, a staggered break system was proposed as an open item for discussion (and declined in November with additional machines made available and disagreement reportedly regis-

[18] In contrast Sherman testified credibly that, during the 8 months that he was a member of The Shop and Safety Committee up to April 1979, there was never any prior independent meeting of The Shop and Safety Committee or any kind of vote by the committee, or on any subject. Committeeman Angel testified credibly that the time and place of prior meetings were regularly established by Hays and Cervi; indeed, that sometimes Cervi would come and get them just before the meeting was held. Hays has acknowledged that, on one later occasion when a Shop Committee member had left Respondent's employ, he had suggested to the committee that they find a replacement for that member, which they promptly did.

[19] Employees are also therein informed that a violation of a major rule can result in immediate termination. For violation of minor rules *infra*, discipline involves written warning (or written warning with 3-day suspension for violation of same rule within 90 days) and with termination provided for receipt of three warnings in a given 6-month period.

[20] Although initially not acknowledging such, Hays later admitted that in a prior statement he had acknowledged that The Shop Committee was permitted to have such on working time.

tered by other employees). A request made for a weekly paycheck distribution was declined because of restrictions of computer system in use; and inquiry made on insurance, received an Employer forecast of change, probably around first of next year. In the same minutes there appears under new business:

> 5. The question of changing committee members was raised. The management of the company will recognize and cooperate with persons selected to the Shop and Safety Committee. However, for the committee to be effective it must be stable.

In the November meeting D. Johnson joined Hays and Cervi. Angel was back with Dazey and Jones, Best continued, and M. Bennett substituted for Detwiler. A plantwide meeting was subsequently held; and nominations made for election to positions on the committee. Ballots, prepared by the Employer's secretary, were used for the first time, and an election was subsequently held for employees to formally choose their new committee members.

In the December 10 meeting, Tucker again joined Hays and Cervi. Joining Angel and Jones were employees K. Chester, B. Leitch, and J. Owens. Under new business there was discussion of possible items for a 1980 wage benefit package, including it being noted there had been a prior 10–13 percent rate of inflation for the year; and recording that an additional meeting in December would be held thereon. Significant was Hays' testimonial concession thereon that though there was no written agreement on such there was then an "understood agreement reached."

In the January 11, 1980, meeting C. Dorgan joined Hays, Cervi, and Tucker. R. Feightner appeared in place of Leitch. Under new business there was a report on insurance, and on wage changes, asserted as totaling 11 percent on average wage rate. In a February 5, 1980, meeting a special meeting was held discussing, *inter alia*, plant production backlog and possible alternatives to a layoff. All elected committee member and alternates were present except B. Jones and J. Owens. Thus present were T. Angel, C. Edwards—final; K. Chester, B. Leitch, R. Feightner—Assembly; J. Sheets—maintance-truckdrivers; K. Sherman, G. Carter—weld shop[21]; and D. Slone—parts department. Additional meetings were held in February in regard to a pending layoff, with majority of committee on February 21 proposing a 4-day workweek, if possible. Present for the Committee on this meeting were Angel, Chester, Jones, Leitch, Owens, and K. Sherman.

6. Presettlement evidence in regard to the Shop Committee origin

The record reveals that a similar organizational drive by Teamsters Local 414 had commenced in the spring of 1976 with (then) Plant Manager Ross having acknowledged at hearing and/or recorded in a prior sworn statement that he had received notice of that union's activity from a supervisor in late April or early May 1976. Ross relates that the first mention of a shop committee was actually by an employee, Harry Steffe, in conversation during a group disciplinary matter. The underlying circumstances were that a group of employees had been ordered to work overtime on a Saturday, had reported in, but had then walked off the job. For that job action, they received several days off in discipline. In the related disciplinary interview attended, *inter alia*, by Steffe and employees Richard A. Collingsworth and Byron Graves, Ross relates that Steffe had said to Ross that they (management) were acting in a very high-handed manner, and that employees needed some kind of a plant committee, indicating they had to set up some kind of a means of communication. According to Ross, he said at that time that he would go along with the formation of such a committee and told Steffe to decide who the employees wanted to represent them. However, a layoff intervened in May; and Respondent's work force went down to a skeleton crew to the point as Ross revealingly testified, "the functions weren't sufficient to where *we* could have established any kind of a committee that would have made any sense at that time." (Emphasis supplied.)

Former employee Collingsworth, in confirming his attendance at the disciplinary meeting, recalled it as being on May 10 (a Monday) and at a time after he had already attended two union (Teamsters Local 414) meetings. Collingsworth's testimony is that Ross on that occasion had said that *he* would like to see the men start a shop committee because they (the employees) were complaining about things in the shop that were not right; though he also recalled that Ross mentioned that he had talked to the men before (about it). Collingsworth personally had heard nothing earlier about The Shop Committee. Collingsworth, who was among the group laid off later in May, was subsequently recalled, only to be again laid off on July 14, 1976 (Wednesday). Former employee Byron Graves also present at the disciplinary meeting essentially confirmed Collingsworth that on that occasion Ross told the group of employees that, if they wanted representation, they would have to form a shop committee, though on cross-examination he somewhat qualified in testifying that he *thought* Ross had brought up the subject of the committee, but he was not sure.

According to Ross it was on a later occasion when the employees made a request of Ross for a lunchroom, or an area to eat, other than general plant area, and for a refrigerator to keep soft drinks in, that Ross actually told the employees to form a committee to talk about it. On that occasion, the employees inquired how they would do so, and Ross replied they should have a meeting and vote on their representatives. However, I am persuaded by the entire evidence of record, and I find, that a notice for such a meeting was first posted on July 20, 1976 (Tuesday), the very same day that Teamsters Local 414 had renewed its handbilling at the Employer's premises, which activity had been reported to Ross.

[21] Greg Carter had been rehired in November; and his overall subsequent employment status is discussed *infra*. I observe that excepting Carter, who began the campaign and was the first employee to sign, Shop and Safety Committee members/alternates L. Ellet, Angel, Slone, Leitch, Chester, Owens, Detwiler, and Feightner all had signed cards for the UAW on or before July 26, except Leitch who signed on July 31.

The meeting at which The Shop Committee was first actually formed was held the very afternoon of July 20, 1976, at the *end* of the shift at 3:30 p.m. This first meeting, I find, was *not* held on company time, but it was held on an impetus supplied directly by Ross following his awareness of renewed Teamsters organizational effort.

Ross and Supervisors Bob Hazzard and Ron Hook attended the formation meeting; as did employee Collingsworth, though at the time on recent layoff. I credit Collingsworth's testimony that it was Ross who started the meeting which was attended by approximately one-half (more or less) of the employees who remained working after the last layoff. Thus, Ross began the meeting by announcing that they could go ahead and start the meeting and elect their officers. Nominations were promptly made and an election held. Collingsworth conceded that such was done without management's participation otherwise in the actual selection process while he was there. However, Collingsworth also testified that after about 5–10 minutes Ross left the meeting, returned, and shortly thereafter Ross *called Collingsworth out of the meeting* and asked Collingsworth what he was doing there. Collingsworth replied he came to attend the meeting. Ross then told Collingsworth that he did not belong there because he was laid off; and Collingsworth then left. Collingsworth acknowledged that it was explained to him that the committee was only a form of resolving problems between management and current employees before they became too severe.

Ross essentially confirmed (and I find) the purpose of The Shop Committee at the time was for employees to air gripes which would then be adjusted.[22] Ross also acknowledged that The Shop Committee representatives had never claimed that they represented a majority of the employees in the plant. According to Ross, The Shop Committee was to meet on items of interest to employees and take care of them for employees, but only after hours, except for safety items. Ross also acknowledged that in a subsequent meeting with The Shop Committee, he had discussed an employee requested lunchroom area, and then granted same; with employees agreeing to provide their own refrigerator.

Graves, at that time also recently laid off, relates that he was notified of the holding of the first (July 20) meeting of The Shop Committee by Collingsworth. Graves testified credibly that he attended the second Employer Shop-Committee meeting held on (I find) July 21. I further credit Graves that *this* meeting began at 3:15 p.m. (regular worktime), and was attended by (essentially) all the working employees;[23] and that Ross then led a 15-minute discussion about a pop machine, though such was not voted on while Graves was there. Again, as with Collingsworth, Ross noticed Graves and asked Graves what he was doing there. Graves replied that as long as he was not terminated he had a right to be there. Graves was then taken by Ross to the general office, being also accompanied by The Shop Committee representatives at Graves' request. On arriving at the office Ross gave Graves his termination papers, apparently dated July 16 (prior Friday), and Graves promptly left. According to Graves, none of The Shop Committee representatives actively participated in any conversations (relating to him) though Graves acknowledged also that he had made no specific reference to raising a grievance on his termination. I credit Collingsworth and Graves in the above particulars.

Ross otherwise testified that after the employees were provided a lunchroom (in August) that The Shop Committee essentially became a "nothing." Ross specifically denied that Respondent had subsequently negotiated with The Shop Committee on any wages, vacations, insurance, etc., for employees.[24] Finally, Ross testified without contradiction and credibly so that there was no Shop Committee operating at all in the plant from February 2, 1977 (Employer settlement date), for the remainder of his tenure which lasted through September 1977.

a. *Preliminary analysis, conclusions, and findings in regard to the independent 8(a)(1) and (2) allegations*

In contending that Respondent's agent, Blankenship, has interrogated employees in violation of Section 8(a)(1) of the Act, the General Counsel and UAW would rely on *Ethyl Corporation*, 231 NLRB 431, 434 (1977), and UAW additionally on *El Rancho Market*, 235 NLRB 468, 472 (1978). I have no quarrel with the efficacy of the General Counsel's or UAW's urged legal principles, as such.[25] The problem with such legal contentions prevailing herein is the unconvincing underlying evidentiary base which was offered. Thus, Respondent has with record substance observed, in brief, that out of all the employees who were in attendance at that meeting, many of whom were called as witnesses herein by the

[22] As conceded by Ross, The Shop Committee formation was:

> Basically to maintain some kind of communication between the plant management and the employees, letting employees know what we were going to do, what our plans were, hearing from them about safety related items, things that they would probably see sooner than we would, and generally just to air their gripes so that, you know, we could find something that was bothering them, we could take care of them.

It was also stipulated by all parties that the most important function of The Shop Committee at that time was actually to find out what employees' gripes were.

[23] Collingsworth estimated that some 15 or more were present at the first meeting; and Graves estimated that there were 20–30 at the second meeting.

[24] Teamsters Local 414 in the interim had filed a charge in Case 25-CA-243 alleging 8(a)(1) and (3) violations in the layoff of Collingsworth on July 14, 1976, and discharge of Collingsworth July 20, 1976; and similarly as to discharge of Graves in Case 25-CA-8387-1. By agreement of the parties, such matters are subject of reinstated informal settlement agreement terms and are thus not further to be considered herein. Case 25-CA-8387-2 charge of 8(a)(1) and (2) and complaints thereon were reserved by the parties for resolution herein.

[25] Thus, the General Counsel correctly would have observed that an employer's probing of an employee union interest and support, by encouraging either agreement to, or argument with, a stated question, may serve to interfere with, restrain, and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act. The UAW additionally would rely on *El Rancho Market, supra*, a case in which an owner's wife had inquired of employees as to their desires for changes, and followed with individual inquiries of employees as to their problems, which were urged to be ironed out by themselves (thus with adjustments promised impliedly, without a union).

General Counsel on other matters, only two witnesses (Greg Carter and Hickman) were produced in support of this particular complaint allegation. I observe and find that the witnesses produced were (on this matter) unsure in their testimonial recollections, and in significant aspects gave substantially hesitant and divergent, if not, as urged by Respondent, actually inconsistent accounts. Respondent's answering witness Hays who denied there were any questions asked by Blankenship; rather testifying of his own recollection, that Blankenship's statements were usually prefaced with a conditioning statement essentially to the effect that what followed was something that employees should ask themselves, or be aware and/or consider, thus the more likely constituting but expression of lawful Employer opinion, or viewpoint. It is the function of the trier of fact to initially determine whether there has been a preponderance of credible evidence presented which is sufficient to convince that a certain Employer statement was made in circumstances under which it tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. It having been the General Counsel's ultimate burden to have persuaded me by an offer of such convincing evidence that a particular statement was made by Blankenship to the assembled employees (or an individual in question-and-answer session) which constituted the unlawful interrogation as alleged, and having failed to do so by the weight of credible evidence offered, I shall accordingly recommend that this allegation of the amended consolidated complaint be dismissed.

The complaint also alleged that in August, Respondent published, maintained, and enforced the certain rules of conduct (thus as were contained in the temporary typed copy of the Employee Handbook when published in August), because employees had recently joined and assisted the Union, and for the purpose of discouraging employees from engaging in such activity. The General Counsel's argument that the above publication of the rules of conduct was itself discriminatory rests essentially on the timing of its occurrence in relationship to the Union's organizing campaign. Though conceding that shop rules of conduct were a basic employee concern which had arisen about a year earlier, the General Counsel nonetheless relies on the fact rules were left unresolved since then; and on Respondent's strong amimus shown present *viz*, the clear hostility shown by Respondent to the Union, evidenced by Respondent's: prompt antiunion speech as delivered by Blankenship; refusal to even accept a delivery of the Union's demand letter in the mail; and the certain other violations of the Act as herein are found. The General Counsel would also have noted as supportive the contrast to be observed in Respondent's action in granting contemporaneous upgraded status to the Shop and Safety Committee upon the Union's arrival on the scene despite prior 3–4 months inactivity of the Shop and Safety Committee.

Earlier findings, however, serve to establish that not only had the subject of employee-desired clear rules for the Albion plant first been raised in September 1978, but there was also from time to time continuing inquiry about the shop rules by certain shop committee members; and there was also credible testimony of Hays (with supporting intracorporate correspondence in early 1979), on the basis of which I find there *was* in fact an ongoing intracorporate dialogue between Albion and Spokane relating to the development of these rules of conduct (along with the other provisions contained in the Albion plant employee handbook) during the first half of 1979, thus well prior to the advent of the Union. The April Shop and Safety Committee minutes likewise confirm there existed an Employer ongoing expressed intention to publish new shop rules of conduct to employees when approved copy was received from Spokane; and Hays both reconfirmed and showed advancement on such with reference to printed copy distribution in question-and-answer session on July 30. Thus, while the temporary typed form of the initial publication may be suspiciously suggestive that there was a decision made for an advanced or hastened publication and distribution of shop rules of conduct in that form at this time, the rules of conduct were no less clear with the appearance of being steadily in the making, indeed evidenced as long in the making. Moreover, the certain specific rules independently questioned by complaint allegations, I am satisfied, did exist in prior corporate rule base. Consequently, I feel constrained to conclude that while the temporary typed copy distribution is itself suspicious in timing of release, the publication of rules of conduct itself, when developed, is not, by virtue of mere timing sequence to union activity and/or Employer's hostility to the latter, thereby controllingly shown as one discriminatory in origin or publication.

However, as to the certain specific rules also independently alleged in complaint and contended by the General Counsel to be violative of Section 8(a)(1) of the Act, clearly the General Counsel's positions prevail; and I accordingly conclude and find that the restrictive rules therein contained on "Soliciting . . . . or distribution of literature . . ."[26] on and on "Unauthorized entry . . ." were indeed independently violative of Section 8(a)(1) of the Act.

Clearly the above employee handbook rule violation provision applying to "Soliciting . . . or distribution of literature . . . on Company premises without specific Company authorization" was unduly broad and unlawfully tended to be restrictive of the above important employee rights to engage in self-organizational activity during their own lunch and break periods on company premises.[27] It would seem clear that there is no apparent limitation of such tendency in that a respondent has not otherwise sought to enforce the published rule by an actual instance of award of provided discipline, where the rule itself has been publicized in a form, which at

[26] *Essex International, Inc.*, 211 NLRB 749 (1974); cf. *T.R.W. Bearings Division, a Division of T.R.W., Inc.*, 257 NLRB 442 (1981). In the latter case, the Board recently explicated, at 443:

> Inasmuch as employees may rightfully engage in organizational activities during breaktime and mealtime, rules which restrain, or which, because of their ambiguity, tend to restrain employees from engaging in such activity constitute unlawful restrictions against and interference with the exercise by employees of the self-organizational rights guaranteed them by Section 7 of the Act.

[27] See also *Mallory Battery Company, a division of P. R. Mallory & Co., Inc.*, 239 NLRB 204, 205 (1978).

best, is left ambiguously restrictive of these basic employee organizational rights. Moreover, even with conclusion that these particular rules were in form as earlier corporately published; and even were it to be further concluded that they had not only been previously applicable at the Albion plant, but remained applicable at Albion (as Hays asserted), though they did not remain posted nor indeed were even generally known to most, if not all employees (as I have found), the General Counsel has still correctly observed that the republication and distribution of these rules (in August in the employee handbook), even in unchanged form, which are still too broadly proscriptive of statutory union organizational activity by employees, effectively constituted a maintenance thereof, which itself tended to inhibit employees in the exercise of their above Section 7 rights in violation of Section 8(a)(1) of the Act.[28]

Finally, inasmuch as the above "Unauthorized entry . . ." rule did not limit access solely with respect to the interior of the plant and other working areas; it thus was left proscriptive of off-duty employees entry to parking lots,[29] gates, and other nonworking areas without a demonstrated business reason justification; e.g., to maintain production, discipline, or security. Being thus stated in too broad a manner, it tended to restrict all employees in self-organizational activity in these areas when off duty and thus tended to interfere with them in the exercise of their Section 7 rights in those areas at those times. Accordingly, I conclude and find that Respondent's unclarified "Unauthorized entry" rule was similarly violative of Section 8(a)(1) of the Act.[30]

b. *In regard to Shop and Safety Committee*

In February 1977, Respondent undertook in the informal settlement agreement that it would not urge its employees to form or join The Shop Committee of Comet Corporation; and that it would withdraw and withhold recognition of same as employee bargaining representative unless and until The Shop Committee was certified. I find that thereupon the prior shop committee immediately became inoperative in the Albion plant.

Respondent next initially established an unquestioned Safety Committee in April 1978. Prior to September 1978, Respondent has had no "dealings" with The Safety Committee on subjects that would constitute this committee a labor organization, and/or in connection with that Safety Committee is unlawful charge made (including Respondent's establishment of a practice of paying committee member employees for their attendance at safety committee meetings). No issue is seen to arise at all until there is an acquiescence of Hays to leadman Paul Sherman's unprompted request in September 1978 for a shop committee to meet with management on employee complaints and Hays' immediate agreement thereto and action in the formation of a combined Shop and Safety Committee.

Paul Sherman's request was a limited one, *viz*, for a shop committee that would meet with management on employee complaints. Unlike employee Richard Sherman's two similar requests for a shop committee which were made of Hays in the prior month and promptly rejected by Hays as unnecessary inasmuch as Hays then felt that there was good communication between the employees on the floor and management, Paul Sherman's request for a shop committee that would bring employee complaints to management was made at the very moment of an existing serious employee work stoppage brought on by inconsistent disciplinary action by supervisors which also convinced Hays that weakness existed in the area of the plant shop rules. (If then posted, it is more probable Hays took existing shop rules down at this time.) Sherman's inquiry as to a shop committee was promptly embraced by Hays as a "good idea." With Hays' announcement that management essentially would meet with a Shop and Safety Committee on employee complaints (grievances) an incipient labor organization is clearly described, *N.L.R.B.* v. *Cabot Carbon Co.*, 360 U.S. 203, 213 (1959); and see *U.S. Railway Equipment Company*, 172 NLRB 708, 720 (1968). I pass for the moment alleged unlawful assistance thereto.

Respondent did not meet and bargain with the Committee about the content of shop rules which was a related concern of the walkout, certainly not before August 7; and addressment of safety matters was only a continuance of the Safety Committee which had been established for months without prior question. Thus, contrary to an apparent urging of the General Counsel, and contrary further to clear contention of Respondent that Respondent had actually recognized and commenced bargaining with the Committee immediately in September 1978 (including wholly discredited contention of Respondent that it had done so because of being faced with a majority demand) I am rather more persuaded, in the light of Hays' above-credited testimony, and I find, that Respondent had neither recognized nor bargained with the Shop and Safety Committee from September through December 1978; indeed I am persuaded it did not do so even through April 1979.[31] However, Respondent just as

[28] *Utrad Corporation*, 185 NLRB 434 (1970), 454 F.2d 520, 523-524 (7th Cir. 1971).

[29] While Respondent was aware of employee solicitation in the parking lot and by employee entrances, all such preshift and postshift solicitation activity by employees appears to have taken place prior to the publication of the above rule in the employee handbook. Inplant activity was minimal; and there was considerable overtime worked by some employees in August, affecting arrival/departure times.

[30] *Bulova Watch Company, Inc.*, 208 NLRB 798 (1974); *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976); *Campbell Chain Company*, 237 NLRB 420, 422 (1978); and *Continental Bus System, Inc.*, 229 NLRB 1262 (1977).

[31] Thus, it was merely recited in minutes to be posted to employees: a pension plan was denied at this time; there will not be a credit union offered until a group can be found that will accept them; an employee pay phone was not possible until the phone company would assume all responsibility for installation cost and monthly minimum billing. There were however some progress and/or open reports in April on other raised subjects, e.g., in regard to an employee paved parking lot (raised in February) that quotes continued to be taken; in regard to vents, that one was operational in Weld, and a second would be provided as soon as possible; in regard to restroom, that the wash basin and hot water were fixed, and the room in process of cleaning; in regard to break area improvement (raised in September 1978) an assertion that a relocation and construction of a new break area would start soon, but without any apparent concurrent response at that time to request for additional machines; in regard to washup period (also raised in February) that such will be afforded only on a man-to-man basis on discussion with the fore-

Continued

clearly did have "dealings" with the Shop and Safety Committee from time to time; and however attenuated in 1978, and becoming progressively clearer in 1979, the same were such as to have confirmed clearly the Shop and Safety Committee a labor organization from its inception throughout this period, though it continued to be an undemonstrated and unrecognized majority employee representative. Accordingly, it is found that the Shop and Safety Committee is, and has been, a labor organization within the meaning of Section 2(5) of the Act since September 21, 1978.[32] However, I further conclude and find that it was not until August 7, 1979, that the Employer formally recognized the Shop and Safety Committee as the representative of employees "in matters pertaining to safety, compensation, employee benefits, disciplinary procedure, etc." It follows and I shall recommend (in any event) that the complaint allegation that Respondent unlawfully recognized and commenced bargaining with the Shop and Safety Committee in regard to safety and discipline, in 1978, be dismissed.

Before passing on to the General Counsel's and UAW's further contentions in regard to claim that there was a radically changed relationship exhibited by Respondent towards the Committee on and after August 7, it seems equally clear that Hays and Respondent's other agents were directly involved in the initial formation of the Shop and Safety Committee and its continuing administration. Thus, it was Hays who at the start controlled combining The Shop Committee in a Shop and Safety Committee because Hays did not wish to meet with more than one group of employees, or committees. It was Hays' further requirement that there be a continuance of his personally selected maintenance and safety representative, on the new Committee (to cover safety and maintenance aspects), and if he did not effectively control the selection of other representatives, it was he who identified the plant areas that would be represented by such individuals, merging one department (material handling) in doing so. Thereafter, Respondent's supervisors and agents participated in all of the committee meetings held in this period.

That the Shop and Safety Committee had in this period, as a practical matter, functioned essentially at the will of Respondent is also plain from other evidenced circumstances herein, *viz*, it had no formal structure, was not self-supporting. Indeed from September 1978 through April 1979, there were no prior and independent meetings of the Shop and Safety Committee by itself; and thus there were no caucuses held by it, nor any votes taken by it on any of the subjects that it did raise. (The same is but further supportive of finding there has been no collective-bargaining or negotiations throughout that period between the Committee and Respondent.) Rather this record wholly convinces me that such meetings as were held were essentially called always by the Employer, occasionally by it at the very last minute. Indeed, though there was an April 12 published (minutes) notice to employees that meetings in the future were to be held regularly on the first Monday of each month in a foreman's office, I have found none were held thereafter for several months. With Respondent's own subsequent failure to actually continue to call meetings, in the period May–July, as it normally had done in the past, Respondent, significantly, simply had *no* further "dealings" with the Shop and Safety Committee at all during that substantial period of time. Neither, with April report of its accomplishments in its dealings with Respondent, did the Shop and Safety Committee seek any renewal of such meetings in the same period. I am convinced it was thus so simply because none were again called by Respondent before August 7. I conclude and find that Respondent was deeply involved in the initial formation of the Shop and Safety Committee and in the ongoing administration of the Committee at its inception in September 1978 and as it developed as a labor organization through April 1979.[33]

The Respondent has contended essentially in regard to allegations of unlawful assistance and support of The Shop Committee that its actions were outside the statutory 10(b) period of current charge in Case 25-CA-11349, filed September 21, 1979. However, Respondent's pre-10(b) arguments, such as they are, are more precisely addressable to its conduct involvement in the formation of the Shop and Safety Committee in September 1978, and its meetings with the Committee prior to March 21.[34]

The General Gounsel contracontends basically that Respondent has twice interfered with employee self-organizational efforts by unlawful assistance and support of The Shop Committee at its Albion plant. More precisely, the General Counsel has correctly conceded that the consideration of whether Respondent's presettlement behavior of prior complaint proceedings (in Cases 25-CA-8243 and 25-CA-8387 (1-2)) may presently be found to constitute violations of Section 8(a)(2) and (1) of the Act, is an issue that can only be addressed after finding is first made of other post-settlement unlawful conduct breaching the terms of the earlier settlement.[35] However, prior events, even pre-10(b) which are of a nature such as to shed light on alleged unlawful conduct occurring within the statutory 10(b) period, are admissible and relevant as background evidence thereto, so argues the General Counsel, generally correctly. *Berbiglia, Inc.*, 233 NLRB 1476, 1485 (1977). But see *Local Lodge No. 1424, International Association of Machinists, AFL-CIO* [*Bryan Manufacturing Co.*] v. *N.L.R.B.*, 362 U.S. 411 (1960), for the parameters of permissible evidentiary use of such anterior events. In that connection Respondent would also

man; that shop rules (which as noted were to date unnegotiated) would be given to shop employees as soon as approved copy was received from Spokane.

[32] *N.L.R.B.* v. *Cabot Carbon Co., et al.*, 360 U.S. 203 (1959); *Does Sixth Ave. Inc.*, 225 NLRB 806, 812 (1976).

[33] Consequently Respondent's arguments that would basically seek to distinguish the 1978-79 Shop and Safety Committee as disrelated from earlier 1976 77 Shop Committee essentially on the basis of its form and structure are simply not to be viewed as persuasive.

[34] Contentions are that its 1978-79 actions in regard to the Shop and Safety Committee are too remote and unrelated to earlier charge concern in regard to Respondent's relationship to the 1976 Shop Committee; that its 1978-79 conduct did not constitute a breach of the settlement agreement of February 9, 1977; and its alleged 1976 conduct is not available and/or proof that Respondent's conduct within the 10(b) period in regard to The Shop and Safety Committee was unlawful as alleged.

[35] *Cornwell Company, Inc.*, 159 NLRB 42, 44 (1966).

have observed the Board's own previously expressed concern, essentially that there be more than minimally independent probative evidence of unlawful conduct within the 10(b) period, particularly where other offered background evidence is remote. *Consolidated Flavor Corporation*, 238 NLRB 326, 327 (1978).[36]

It is not of dispositive significance in this matter that the Shop and Safety Committee has been found to be a labor organization since September 1978, inasmuch as the mere pre-10(b) existence of the Shop and Safety Committee as a labor organization does not preclude findings of specific incidents of alleged unlawful assistance and support later rendered that committee within the 10(b) period, if otherwise established.[37] The General Counsel relies principally on contention that 10(b) conduct, and particularly Respondent's conduct on and after August 7, constituted serious violations of Section 8(a)(2) and (1) and fundamental and material breach of the prior settlement agreement, thereby justifying the Board's Regional Director thereafter setting the settlement agreement aside, and proceeding not only on original 8(a)(2) and (1) allegations in Cases 25-CA-8243 and 25-CA-8387 (1-2) in regard to Respondent's alleged initiating, forming, sponsoring, and promoting The Shop Committee in 1976, but also its conduct in September 1978, and subsequent conduct (by amended allegations) of interference with formation and administration of that employee committee.[38]

I address first the matters of alleged unlawful assistance and support rendered the Shop and Safety Committee clearly within 10(b) period, principally Respondent's conduct towards the Committee on and after August 7. Of all such conduct claimed to constitute unlawful assistance, support, and encouragement of the Shop and Safety Committee none would appear to be more clear, and more indisputable, than was the act of formal recognition then broadly extended to the Shop and Safety Committee by Respondent for the *first time* (only after employee organizational effort had begun at the plant) as the representative of employees "in matters pertaining to safety, compensation, employee benefits, disciplinary procedure (sic), etc." with specific direction to employees to channel their input on such subjects to the committee; and with further notice that committee meetings with management are held monthly and that a plant employees' meeting with same might be scheduled upon request and their approval. All of the same stands in stark contrast with Respondent's 3-4 months hiatus in having had any "dealings" with the Committee, for whatever reason. That formalized status granted to the Committee was first noticed in discussions with the committee members on the employee handbook when they met on Respondent's call on August 7; and the same was later individually published to all employees with the subsequent distributions of, firstly, a temporary typed copy of employee handbook in late August, and secondly, printed copy of same distributed to employees 3-4 weeks later. Nor is it overlooked that this formal recognition shortly followed an expression of Respondent's own strong antiunion stance made promptly and clearly to all assembled employees on July 30, and on the heels of a concurrent Respondent stress laid upon employees in regard to existing employee lines of communication with management in context made unmistakably clear of even date. The extended formal recognition was also contemporaneous with formalized (unlawful) shop rule restrictions placed on employee union activity at the plant in regard to soliciting, distributing literature, and access, as earlier found.

Nor were Respondent's immediately renewed "dealings" with the Committee unappreciable then, or in the months to come. Thus on August 7 Respondent immediately discussed details of its plan for a proposed employee parking lot and it effectively reopened for additional discussion under (new) title of old business, such subjects of prior committee interest as: the earlier desired washup period for all employees at end of shift;[39] and it also promised a renewed effort would be made to obtain a credit union. The employees and the Committee did not fail to heed or to take full advantage of Respondent's offerings. In subsequent months discussions freely covered a variety of subjects, overtime hours policy, vacations, work assignments, work by supervisors, institution of welder certification program, insurance, indeed leading eventually to discussion of and agreement on a full wage benefit package in December, effective in January 1980. Consultations on layoffs begun in late August were continued in January and February 1980. I conclude and find that it was only following Respondent's grant of the above formal recognition and its broad invitation that the "dealings" of Respondent with the Committee were thus broadly extended to the whole gamut of collective-bargaining subjects, and Respondent thereupon in substance and effect (I find) commenced bargaining with the Committee.

Respondent's formal recognition of the Shop and Safety Committee, after a substantial period of the latter's inactivity, and Respondent's interrupted "dealing" subsequently upgraded to bargaining with the same Committee in regard to the employees' rates of pay, wages, hours, and other terms and conditions of employment, has unquestionably seriously interfered with the intervening basic employee self-organizational effort then only recently begun. Accordingly, I conclude and find that, commencing on August 7, Respondent did recognize and subsequently bargain with the Shop and Safety Committee, a labor organization, as the exclusive representative of its production and maintenance employees in matters pertaining to wages, hours, and other terms and conditions of employment, notwithstanding that said Committee had not demonstrated that it represented an

[36] Clearly presettlement conduct may otherwise reveal the motive or object of a respondent in its postsettlement conduct, *Northern California District Council of Hodcarriers and Common Laborers of America, AFL-CIO (Joseph's Landscaping Service)*, 154 NLRB 1384, fn. 1 (1965).

[37] See, e.g., *Walker Process Equipment, Inc.*, 163 NLRB 615, 620, 623 (1967).

[38] Thereby encompassed properly would be all of Respondent's alleged unlawful conduct.

[39] In contrast with earlier disposition of the request on the basis of a man-to-man determination by an involved foreman, subsequent discussions led to grant of the 5-minute washup period for all employees, made effective in December. It also reviewed and made changes on discipline matters in *this* meeting.

uncoerced majority of those employees, and had not requested such recognition; and that thereby Respondent did render the Shop and Safety Committee unlawful assistance and support, which seriously interfered with Section 7 self-organizational rights of employees in violation of Section 8(a)(2) and (1) of the Act.[40]

Respondent has afforded the Committee other clear instance of unlawful assistance and support in its conduct of permitting an assembly of all employees on company premises on company paid time during which certain committee member conducted solicitation of authority to support their participation in the representation hearing; by its clerical and other assistance in formalizing committee membership status by secret ballot in December; by typing and posting minutes of its meetings in this period of heightened activity and by its payments of wages to committee members for their attendance at these meetings, as well as for their attendance at the representation hearing and the instant unfair labor practice hearing; but not, in my view, for mere advancement of contention during representation hearing that the Committee should be allowed a place on the ballot in a Board-conducted election.[41]

In the light of Respondent's prior voluntary undertakings in settlement agreement of 1977 that it would thereafter refrain from urging employees to form or join the Shop Committee at Albion and that it would withdraw and withhold recognition therefrom unless and until the Shop Committee was certified as collective-bargaining representative, I further conclude and find that there has been a substantial and material breach of that prior voluntary adjustment by Respondent's above unlawful recognition, and bargaining with the Shop and Safety Committee at Albion, and by its above other unlawful assistance and support rendered thereto.

The evidence as to the origin of the Shop Committee in 1976 is clear and convincing and itself need not be belabored. The weight of the evidence supports finding, and I find that Former Plant Manager Ross, when initially faced with the Teamsters Local 414 organizational effort at his plant, sponsored and urged employees to form and join a Shop Committee at Albion initially in May 1976; and that thereafter, in July 1976, on the occasion of the Teamsters renewed organizational effort (after a substantial layoff), Ross renewed and gave impetus to the formation of the Shop Committee, and in so doing encouraged employees to form and join it; and that he and other supervisors and agents of Respondent then attended, participated in, and controlled the attendance at its formative meetings on July 20 and 21; and that by all the above conduct, and by permitting a meeting of The Shop Committee to be held thereafter on paid company time on July 21 in which Respondent discussed benefits and/or terms and conditions of employment Respondent has unlawfully participated in the formation and administration of the said Shop Committee and constituted it a labor organization from its origin; and has by all of the above conduct rendered it unlawful assistance and support in violation of Section 8(a)(2) and (1) of the Act; and in practice and effect has dominated it.

The evidence of record has convinced me that with the settlement agreement entry by Respondent the original Shop Committee effectively ceased to function and exist; and that the Safety Committee which was thereafter first inaugurated in April 1978 neither then reasonably constituted a continuance of The Shop Committee in other form, nor were Respondent's dealings therewith such as to reasonably warrant finding that the same constituted a labor organization, particularly so when the same as such has not been alleged. Similarly for reasons detailed above which need not be repeated presently I have found facts which lead me to further conclude that Hays did *not* urge employees to choose the newly formed Shop and Safety Committee as their collective-bargaining representative in September 1978, neither for safety nor discipline as alleged in the complaint. As to the former a safety committee was already functioning; and as to the latter, although clear shop rules relative to discipline award were a continuing concern of employees, I have found Hays had no discussions with employees about their content from Septemer 1978 until August 7, 1979. I shall recommend that these complaint allegations be dismissed. There can be no real question presented in regard to the background of Hays' involvement with the formation of a combined Shop and Safety Committee, nor also in regard to Hays and other supervisors' and agents' participation in all Shop and Safety Committee meetings and payment of members for attendance thereat. It was Respondent's call and wish that controlled the schedule of its meetings. I accordingly conclude and find further that Respondent has thereby controlled the formation of this employee labor organization and rendered it unlawful assistance and support, interfering with its operations, all in violation of Section 8(a)(2) and (1) of the Act. I conclude and find in practice and effect it had dominated the Committee.

C. *The Alleged Discriminatory Layoff and Discharge of Welders Gregory J. Carter, Hugh Hickman, and Martin McCoy*

By August 16 the UAW had obtained to a majority of signed single-purpose authorization cards and sent its demand for recognition to Respondent which Comet officials received August 17, but, with anticipation of its likely contents refused to accept. On August 23, UAW filed petition; and Respondent concedes it had received copy thereof before announcement of any pending layoff. On Tuesday, August 28, a notice of pending layoff was posted by Respondent. The notice recited, *inter alia*, that there had been a downward industry trend generally; and specifically, that two large contracts had not materialized "*due to customer's hesitancy to purchase equipment during this economic downtrend*" (emphasis supplied); and that a layoff was necessary and would be announced the following Friday, August 31. For the first and only time employees were notified that such layoffs would be "without expectancy of a recall." On Friday,

[40] In view of the weight of 10(b) probative evidence offered, the case of *Consolidated Flavor Corporation, supra*, relied on by Respondent is clearly distinguished.

[41] A representation case proceeding is basically an investigatory one in which all parties should be left fully free to bring all potentially material facts to the attention of the Board.

August 31, the names of 22 employees thus selected for permanent layoff (or termination) were posted.[42] Included were the names of welders Gregory Carter, Hickman, and Martin McCoy. I find that on August 31 they were permanently laid off or terminated.[43]

At the outset it is to be observed that the General Counsel does not attack by complaint allegation Respondent's assertion that economic grounds existed at this time for a general layoff of employees. Rather the complaint has more precisely alleged and it is the contention of the General Counsel (and UAW) specifically that three of four welders laid off at this time were discriminatorily selected for the layoff on August 31, 1979, because of their prior union activity.

1. The General Counsel's *prima facie* case

The high profile of Carter and Hickman as the leading union adherents, and Respondent's awareness of same, has been heretofore found. Respondent's general hostility to the Union is every bit as clear from its prompt anti-union speeches employees, rejection of union claim and the unfair labor practice conduct heretofore found, as is Hays' hostility thereto, as particularly and specifically made visible towards Carter.

The posted August 28 notice also asserted: "Company practice has always been to lay off by seniority within classification. We will at all times protest the seniority rights of our employees." Also posted at this time was a list of employees entitled "Employee List By Seniority Within Classification." This was the first such list, *viz*, seniority within classification, that employees had ever seen before in the plant; and I find it had been prepared under Hays' specific direction for use in this layoff after consultation with Blankenship. All prior and subsequent seniority lists were plantwide seniority listings.[44]

Of 46 employees listed under the assembly department on the August 28 list, 14 were subsequently laid off on August 31; of 14 employees in the final department, 3 were laid off; and of 10 employed in the parts department, 1 employee was laid off. Of the 13 employees listed under weld department, 4 welders were laid off. There were no layoffs in other departments and/or work areas.[45]

There is also credible, indeed uncontradicted, evidence in the form of current weld department leadman, Richard Sherman, that in past layoffs Respondent's practice had been to retain its welders over other less skilled job classifications, if at all possible, and specifically over assemblers.[46] The last plantwide seniority list prior to the August 28 list was July 27. It is clear from analysis thereof that Carter, Hickman, and McCoy, the alleged discriminatees herein, and another welder (Hovarter) were the four *most* senior employees *in*voluntarily laid off on August 31. (Their 1979 seniority 10 dates of hire were: Greg Carter, April 17; H. Hickman, April 18; M. McCoy, May 22; and Randy Hovarter, June 11.)

Thus Carter and Hickman were *the* most senior employees *in*voluntarily laid off. Between Hickman and McCoy, the next most senior employee laid off there were six employees retained, they being three employees in assembly, one (rehired) material handler/leadman (Eugene H. Best, Jr.), and two in parts.[47] Between McCoy and Hovarter, the next most senior employee laid off there were four or five employees retained, they being three in assembly (including Ryan J. Winebrenner listed as summer help) and one or two drivers.[48] Even more in seeming contrast with prior stated practice of keeping welders, if at all possible, between Hovarter and Howard L. Mapes, assembly, the *next* most senior employee laid off, there were some 14 additional employees (one in parts and the rest in assembly, but with one) (Chris P. Edwards) shown as quitting the same day.[49]

[42] One, the most senior, John Klopfenstein, a final electrician (but listed under assembly) had planned on leaving, notified Respondent prior to the layoff and took a *voluntary* permanent layoff at this time.

[43] Gregory Carter was rehired on November 1 and Hickman on November 5 as *new* employees. McCoy was not. Carter and Hickman have been subsequently laid off and recalled, but never with a full prior service credit return.

[44] The General Counsel introduced in evidence all such prior lists that were applicable from February 1 through July 27 (the latter with its additions and deletions through August 27), entitled "Seniority List," and update lists thereafter dated entitled "Seniority List," and update lists thereafter dated September 5 through November 7, entitled "Employees Seniority Lists." Hays also related that these lists (e.g., prior to August 28) were not actually seniority lists but only a list of employees by clock number (essentially sequential) used for purposes of fringe benefits. However, in agreement with the urgings of the General Counsel and UAW I reject such characterization as one not warranted by clear weight of credible testimonial and documentary evidence of record. In that connection, later at the hearing Hays claimed that certain other lists (identified as Resp. Exh. 7) were prior lists by seniority within classifications. On lack of Hays' ability to properly authenticate them, and on objection being sustained, the lists (Resp. Exh. 7) were withdrawn. No effort was made thereafter to introduce them by any others who it would seem would have been able to properly authenticate any actual use of them. Leadman Sherman did testify that there were manpower assignment lists by classification but denied they were seniority lists. In brief Respondent appeared to urge that these lists were related by Hays as used for purposes of seniority within job classifications, but neither record cited, not the documents introduced, nor the record as a whole convinces me of that fact. I conclude and find the August 28 posted list was uniquely prepared for use in the August 31 layoff.

[45] There were no employees laid off in the material handling department; and there were no full-time drivers laid off. Though several part-time drivers had been previously employed by Respondent, they had not been called to work for a long time; they did not appear on this list; and they were not called for work subsequently. Though the part-time drivers were not specifically notified of a termination, nonetheless I find, under all of the above circumstances and the record as a whole, that they had had no likelihood of a call to work.

[46] This finding is based on uncontradicted credited testimony of weld leadman Sherman that he was told by (admitted) Shop Supervisor Robert Hasserd on the occasion of a prior layoff in 1976, that in a layoff, welders were retained if at all possible, since other categories of workers with less skills, such as assemblers, were easier to obtain. (Welders were put to work in maintenance.) The last prior layoff by Respondent in 1976 was during the tenure of former Plant Manager Ross. The instant August 31 layoff, however, was the first layoff effected in Hays' tenure as plant manager.

[47] Included in this group was Thomas R. West, hired as a welder on May 9 (less senior than Carter and Hickman) but transferred to parts department on July 2, but who subsequently worked in the weld department after August 31, discussed *infra*.

[48] Included was Erville K. Callison (thus less senior than all alleged discriminatees), who also was assigned to do weld work thereafter, discussed *infra*; and Buddy D. Todd listed as a driver, on July 27 list, but who does not appear on August 28 list.

[49] Also significantly less senior than Mapes but retained was driver Terry L. Stafford, who was assigned to do weld work thereafter, also discussed *infra*. Another listed driver, Bryan L. Truman, also does not appear on the August 28 list.

Finally 15 of the 17 *least* senior employees were laid off at this time, principally in assembly except that one, D. Edsall, shown as being laid off on August 31 list is shown on the July 27 seniority list (update) as quitting the same day (August 31).

On the basis of the above-determined very prominent and leading union activity of Greg Carter and Hugh Hickman, Respondent's (including Hays' personal) knowledge and exhibited displeasure therewith, Respondent's deep hostility toward the Union otherwise clearly shown present, along with the timing of the termination of Carter and Hickman being within 2 weeks of refusal of union demand letter by Respondent and 1 week of union pursuit in petition filing, and with appearance of their permanent layoff being inconsistent with a prior practice of Respondent, I conclude and find that the General Counsel has made a strong *prima facie* showing that the selection of Carter and Hickman for permanent layoff on August 31 was discriminatory, and their resultant discharge in violation of Section 8(a)(3) and (1) of the Act.

As to the third alleged discriminatee, Martin McCoy, the General Counsel, while appearing to concede there was more limited union activity by McCoy and a lack of showing of direct knowledge on the part of Respondent of McCoy's union activity, proceeds on a theory that Respondent had to terminate McCoy first in order to get to Carter and Hickman and that thus McCoy's layoff involved a discriminatory motivation even without direct company knowledge. (The General Counsel does not advance complaint allegation or similar claim as to Hovarter, who, like McCoy, had signed a union card on July 25.) The General Counsel also introduced evidence that establishes that one of the two employees retained (in the group of the 17 least senior employees) was Skip E. Altimus who is shown on the August 28 list, separately, under heading of "Axel [sic] & Brake *Assy.*" and not the weld department; but who was hired as a welder on July 27, was so shown as such on the July 27 seniority list and other company records, and whose above job Sherman has testified without specific contradiction by Respondent that both he (Sherman) and McCoy were previously trained to do (and Carter and Hickman could have been trained to do). I conclude and find that the General Counsel has made out a *prima facie* showing sufficient to support inference of discriminatory motive as to McCoy as well. The General Counsel correctly observes that once the General Counsel has established such a *prima facie* case, the burden is on Respondent to establish bona fide reasons for its actions, indeed that it would have laid off McCoy (and Carter and Hickman as well) in any event, *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). See also *Central Merchandising Company*, 194 NLRB 804 (1972). I turn now to Respondent's contentions and evidentiary offerings in support.

2. Respondent's defense

a. *Inhouse orders*

Company records show that the Employer had received one significant order increase on May 10. Involved actually was a change order from Spokane, at customer urging, which provided for production transfer from Spokane of an additional 100 trailer units increasing the overall total ordered to be manufactured at Albion to 536 units. The customer was Pacific Intermountain Express (herein PIE). (The first 100 units of such order had been earlier produced at Albion commencing in February.) Despite the order increase a prior scheduled completion date of September 30 was retained at this time. According to Hays, this meant that he would have to push the Albion plant beyond its designed capacity, but Hays felt at the time it could be done because of the production repetitions that would be involved in building that many of the same type trailer. PIE had by this time become the Employer's largest customer, as the Employer wound down delivery on an interim order of (35 similar) units for another customer, Northwest Transport (herein NWT).

b. *Employee buildup and increased trailer unit goal*

Records reveal that commencing on May 10 Respondent engaged in a buildup of its employees from the approximate (plant designed) complement of 70–75 employees to the 105 employees listed on the August 28 list immediately prior to August 31 layoff.[50] During this period, after review of order schedule, the Employer also raised its trailer unit per day production average (herein simply unit average) goal with the above expansion of the work force from a four-unit average to a six-unit average goal.

c. *The new trailer brake system problems*

During May, Respondent had also taken over the installation of a new brake system for PIE, which system was engineered by Borg & Beck Company (herein B & B) and B. F. Goodrich Company (herein BFG). The brake system was a totally new one in the industry. The first such brake units had been initially installed by BFG personnel in February on the 100 units otherwise produced by Respondent at that time. First units produced by Respondent with such brake system installed by Respondent were delivered in May. Hays testified that it soon became apparent to him that the system (still) needed refinement. Indeed with prior delivered units now regularly being reported back as experiencing serious difficulties with their brakes on the road, Hays became so concerned about Comet's potential liability from the installation that Hays notified PIE that the Employer would cease to install the new system. According to Hays, with BFG assurance that they would assume li-

[50] Included are the four drivers who had not been listed on any seniority list prior to July 27, and whose first appearance on the original July 27 list postdated UAW notice to the Employer of the start of its organizing campaign. The clear (late) assignment of sequential clock numbers to these drivers when placed on the July 27 list in seniority sequence at this time speaks eloquently in confirming that prior treatment of seniority of employees separately from drivers was the fact. Hays also acknowledged that certain part-time drivers, who the record reveals had not worked for a long time, were removed from the August 28 list after only first appearing on the July 27 list. Indeed driver Shepard testified that he, Stafford, and Callison (and excepting dispatcher Gage) were the only drivers employed from January 1979.

ability if they could train the person installing the new system, and periodically check the work, Hays found such an arrangement an acceptable one, and production was then continued.

On basis of credited documentary correspondence from BFG from B & B to Employer, I find that it was on May 29 that representatives of both B & B and BFG visited the plant and after inspecting and finding an "automatic slack" adjuster was installed improperly, Ron Gesquirre of B & B performed an initial training session for (certain) "hourly people," including specifically employee Ron Young who was then doing the installation, and also Cervi. BFG representatives later confirmed in writing confidence that they (Young and Cervi) had then enough training to install the B & B automatic slack correctly. (Cervi however is not a welder, and thus could not perform the preassembly welding production part of the brake and axle assembly). Contract delivery schedule with PIE was at this time rescheduled from September 30 to an unspecified date in October. At this point of time the ordered, but yet undelivered, PIE units constituted 90 percent of the Employer's existing backlog. Final deliveries on this order would not eventually be made until November. During the overall period there were many visits by B & B and BFG at first, which lessened at the end. There were additional difficulties with parts which were apparently overcome by June–July, with installation instruction revision being accomplished in September by BFG.

In the earlier related BFG correspondence to the Employer, referring to the May 29 plant visit, but dated June 29, BFG representative there significantly relates:

> If a turnover in production personnel should occur, please do not hesitate to contact BFGoodrich or Borg & Beck to perform another training session. A BFGoodrich representative will periodically call on Comet's Albion facility to ensure that harmony remains on the installation of the BFGoodrich Power Screw Air Disk Brake.

d. *Certain anticipated orders do not materialize in August*

Hays relates he at this time also became concerned about obtaining new business that would sustain the plant's oversized manpower level which was otherwise inconsonant with a normal attrition. Thus, in June and July, Albion, *inter alia*, quoted bids to four of its prime customers: (1) PIE (in regard to 125–300 units); (2) Carolina Comet, a dealer; (3) North West Transport; and (4) Yellow Freightlines. However, when certain of these orders fell through in August, Hays decided that he would have to make an adjustment of the work force by a permanent layoff.[51]

Hays relates that in view of the plant's existing rate of production currently obtained, it had then appeared to him that the plant would run completely out of its existing work in September (somewhat overstated). According to Hays, in order to spread the work out longer and keep the plant operating, it was necessary for him to lay off people; and after consultation with Dorgan, *he* selected and laid off the 22 employees whose names appear on the August 31 permanent layoff notice. (Essentially Hays explains that the layoff was made permanent because there was nothing on the horizon to indicate a repeat of the conditions under which they had recently, but never before, operated.) He also revised the production at that time down from 6 to just under a 4-unit average. However, it is clear a 4-unit goal was established for the weld department; and standards (for weld) were created in September to meet that goal. Respondent denies in effecting the above layoff that it has discriminated against welders Carter, Hickman, or McCoy.

3. The countercontentions

The complaint did not allege, nor did the General Counsel ever contend herein that the August 31 layoff was itself discriminatory in origin, or advancement. What is the litigated issue, solely and precisely, is whether Respondent Employer, given that economic conditions arose at this time warranting a layoff, nonetheless, in effecting a required cutback in its employee complement, it has opportunistically laid off union adherents Carter, Hickman, and McCoy, discriminatorily as alleged.

Thus, the General Counsel countercontends that even despite concession on Respondent's above-asserted economic grounds for a layoff, that the termination of welders Carter, Hickman, and McCoy was discriminatory is revealed in two major ways: (1) Respondent's manipulation of departmental status and assignments of certain employees (Altimus, Angel, Bennett, and Richard Sherman) in effecting the layoff of Carter, Hickman, and McCoy, contrary to the Employer's past employment (and layoff) practices; and (2) by evidentiary showing made that Respondent's layoff of four welders (following on the heels of Employer's termination of two welders earlier) had the effect of simply cutting too deeply into the weld department's manpower for it to meet even its own revised production schedule, as is demonstrable from its own production records and from regular use thereafter of employees from outside the weld department to do welding work. UAW further contends that the record herein has revealed that Respondent has so clearly been shown to have manipulated certain of its own lists and statistics in the presentment of its economic

[51] Credible testimony of Hays and intracorporate documentation establishes to my satisfaction that Spokane was notified on August 2, and Hays no doubt promptly thereafter, that PIE had decided to defer on its (next) prospective order *indefinitely*, inviting renewal of quotes in the second quarter 1980. I am also fully convinced that a pre-August 28 trip of Hays for new business purpose to North Carolina (acknowledged by Sherman) had proved similarly unsuccessful. I credit Hays that by this time he had also been informed that NWT would also not be ordering further in this period. While Hays' further recollection of having additionally received a call on August 27 or 28 from Spokane on still further loss of a Yellow Freightlines anticipated order to a competitor is, as noted by UAW, at odds with intracorporate record of notice of same being given by Yellow Freightlines to Spokane later (September 5), the earlier above-related material convincingly supports the notice given employees on August 28 in explanation of pending layoff, that two large contracts had failed to materialize "due to customer's hesitancy to purchase equipment during this economic downtrend." (I observe in passing that loss of Yellow Freightlines bid to competitor is not encompassed therein; and I place no reliance thereon.)

defenses herein that its assertions even otherwise for the nondiscriminatory selective layoff of Carter, Hickman, and McCoy has been rendered thereby not worthy of any credence.

4. The evidence

a. *The claimed manipulation of departmental status and work assignments of employees allegedly to effect discriminatory layoff; analysis*

I begin with statement of the perspective that the layoff of August 31 was the first layoff at Albion with which Hays was involved. Hays has testified that he decided that he would lay off by seniority, but would do so within job classification; that he would keep the most senior employees, or an employee, e.g., Skip Altimus, with (contended) special skills or training, discussed *infra*. In doing so, Hays compiled a *new* type seniority list which Hays eventually of record acknowledged had *never* been done before at Albion. Hays also testified that under the established standards for the weld department effective in September, the goal of weldment production for four trailer units a day could be met with eight welders. On the August 28 list Hays caused the weld department to appear to be composed of 13 welders. (Not included was an additional welder, D. Hull, hired on July 23, who was terminated on August 23.) On August 31 welders Carter, Hickman, McCoy, and R. Hovarter were laid off. Additionally listed welder Taylor Watts III, with hire date of June 4 (thus with less seniority than McCoy), terminated on August 29. Thus, after Hays' announcement of pending layoff Respondent had reduced its welder force by five welders; but, in real substance and effect it had reduced its welder force by six welders within but 5 days of the announcement of need for layoff. Not listed in the layoff was Skip E. Altimus who *inter alia* regularly performed weld work.

Employee Skip E. Altimus was hired on July 27 as a welder. Within a few days Altimus was moved onto the axle-and-brake assembly job for which I find he had been initially hired. Thus Ron Young, the employee first assigned to this job and originally trained by B & B and BFG, had quit about 3–4 weeks earlier on July 2, after Young had become discouraged by continuing difficulties of the job. Before leaving, Young had trained another employee, Buford Owens, who then took over the job. Owens had also received subsequent training on the job from a BFG representative; and, according to Sherman, whom I credit, Sherman and McCoy received similar training on this job at the same time as well. However, I credit Hays that he was unaware that McCoy had ever received any such training on that job; and McCoy never subsequently performed the job. Owens did not last on the job; and it was Sherman who next was assigned to and worked on the job for about a week before Altimus started performing the work after an initial training on the job provided by Sherman.

Sherman confirmed that it was within a week of the hire of Altimus that Cervi had told Sherman that Altimus was hired for that job. Sherman also testified credibly that he had no authority to assign a welder to that job; and that his understanding was that a man could start to build the axle-and-brake assembly (without receiving BFG training first), but the Employer wanted the assigned employee to have BFG training eventually. Sherman, corroborated by Altimus, testified that he initially trained Altimus, but, so far as he knew, he was the only one to do so. Be that as it may I am convinced that Altimus' work on the new axle-and-brake assembly was approved by BFG as was the work of employees performing this job before him.[52] Altimus would perform this work until he himself was laid off in a second major layoff which occurred much later on December 7. That layoff brought the plant's working complement down to 35 employees. Hays explained that with production then down to a trailer a day, he concluded that he could no longer justify the expense of a specialist. Moreover, at this time Respondent was without orders; and it was building 100 trailers on speculation of likely sale. The trailers thereafter produced were marked for subsequent appropriate inspection before delivery. With Altimus' later refusal of a recall because of other employment, others, after first being trained, received further training from BFG.

In July–August there had also been a parts shortage on the brake components. The trailers were produced so far as could be done; and then overflow of incomplete trailers was parked on the Employer's lot. Altimus eventually worked this overflow back to his own work station. Prior to the layoff of August 31, Altimus was regularly working 4–5 hours daily on "axle and brake assy" and 3–4 hours in the weld department on "sills," which he continued to do after the August 31 layoff through September. Starting in early October, he regularly worked at least 6.25 hours (discussed *infra*), if not more in the 2 weeks immediately prior to Carter's rehire on November 1.

Essentially, the General Counsel argues that there is an inconsistency in the above retention of the less senior welder Altimus, and a departure from (earlier) Dorgan representation case testimony that the Employer's layoffs were accomplished by department and seniority, without

[52] Although Altimus confirmed Sherman, that Sherman was the only one to train him, Altimus was shown in prior statement to have made declaration that he received training on the job from a PIE representative. At the hearing, Altimus disclaimed the conflicting statement as one erroneously reflecting his own declaration, ascribing that statement to what he understood at the time had been said of him by others, but that it was not so. Although the statement had been taken under concededly unplanned and personally interruptive circumstances, it was nonetheless affirmed by Altimus at the time. On the other hand there was no evidence in this proceeding otherwise of PIE having trained anyone on this job, theretofore, or thereafter. Hays seemingly asserted that Altimus was trained by both BFG and B & B; but Hays also acknowledged he never personally saw Altimus trained. Foreman Tucker recalled Altimus being trained out on the lot by BFG representative Wood; but recalled it as being in June, thus well before Altimus was even hired and at a time and place seemingly more indicated on this record that Wood was with Owens. In sum, there is thus much confused testimony, indeed, seemingly contradictory statements in regard to any additional direct training that Altimus may, or may not have been afforded by BFG, B & B, or PIE. I need not resolve same as I am fully satisfied that the record sufficiently has established otherwise that the work of Altimus on the "axle and brake assy" job *was* subsequently approved by BFG in Chicago, in one form or another. (This finding is based on credited testimony of Altimus of receiving such report from Cervi, and Sherman corroboration of same further from Hays, though received after the layoff.)

interdepartmental bumping. Thus, in view of Altimus being less senior than all four welders laid off and particularly than McCoy who had also been trained in that job, and than Carter and Hickman who (according to Sherman, whom I credit) were capable welders and who could have been trained as Altimus was, Altimus was improperly retained in order to effect release of these senior welders, who were involved with the Union, so argues the General Counsel. In that connection, the General Counsel would have it noted that the appearance of Altimus under heading of "Axel (sic) & Brake Assy." on the August 28 list separate (for the first time) from weld department, while still being carried on other company records as a welder (e.g., on his timecards through September 8; and in regard to pay increase on August 29) reveals that there was a manipulation of Altimus' status to retain him over the more senior welders who were interested in the Union. Respondent answers essentially that Altimus was retained simply and solely because of the job he performed and his special and (argued) sole training in it.

In my view the above circumstances present a close question, but one on which I do not find myself ultimately persuaded by the preponderance of evidence to an acceptance of the General Counsel's (and UAW's) contentions over Respondent's explanation for retention of Altimus. Thus, while the timing of the appearance of Altimus under Axle & Brake Assembly separate listing is suspicious, and particularly so in the light of other findings hereinafter made as to that same list, it is clear that this work station "axles" on manpower assignment listing had fluctuated in the prior 2 months from appearing under parts (June 22) to appearance under the weld department (August 3); and in each instance, it was separately listed thereunder. The General Counsel's own evidence and position was that it was Respondent's practice in layoff to retain welders, if at all possible. Hays did not know (as found) that McCoy had had any prior training in this job; and if Cervi knew, he no less had hired Altimus for that job despite that as a consideration. Although some welding is involved in the job, major welding ability is not. McCoy was not shown especially active in union affairs, nor is showing made of Respondent's awareness of same. Carter and Hickman had never performed this job, nor were they trained to do it. But even more persuasive on the ultimate point, Hays has testified generally and persuasively so, essentially that he was not about to expose the Employer in any way to any liability on this project. Given the above unquestionable and ongoing difficulties with installing this innovative brake system, one that had reportedly failed in trailers all over the country and was being continuously adjusted and refined, with BFG more recently reported satisfaction with Altimus' present assembly of the units, I conclude and find that the retention of Altimus by Respondent was simply pursuant to a management decision made at this time that I am convinced it reasonably appears would have been made by it, in any event.[53] However, Respondent's actions otherwise taken in connection with this list and with the layoff of welders at this time are quite another matter, as we shall see.

With the layoff of Carter, Hickman, McCoy, and Hovarter (and with the intervening terminations of Hull and Watts), according to Respondent, the weld department consisted of the following eight welders:

(1) M. Bennett	(5) T. Angel
(2) R. Sherman	(6) D. Delong
(3) T. McGuire	(7) K. Sherman
(4) L. Hurley	(8) R. Detwiler

I begin with observation that in contrast with prior layoffs where attempt was made to retain welders if at all possible, in this instance, this layoff unquestionably hit hardest in the weld department and it was made a permanent one. But even the above immediate observation does not reflect the full import of the nature and effect of this welder lineup.

For months prior to August 28, M. Rennett had been working in the maintenance department (conceded by Cervi, and fully supported by company records); and Bennett had worked essentially on maintenance repair, only part of which involved welding. I find that prior to his August 28 listing in the weld department, Bennett was a full-time employee assigned to the maintenance department, not the weld department. Again in passing, I observe that in contrast with prior employer practice of retaining skilled welders by temporary assignment to do maintenance work, here we have instance of the very reverse, *viz*, a reassignment of a maintenance employee to the weld department to take the place of a welder to be displaced by permanent layoff. Bennett for the next month and a half would work mainly on running gear theretofore performed by Carter and Hickman. (I also observe that, despite a major layoff in December, Bennett was returned to maintenance.)

Similarly, Angel, prior to August 28 (I find) was assigned to the final department and had been so since late 1978. Indeed Angel had relinquished his representative status for the weld department on the Shop and Safety Committee upon transfer, though he then became such for the final department. I conclude and find that Angel was a full-time employee assigned to the final department, not the weld department. In that connection, neither can the clear inconsistency of position be overlooked in Respondent's asserted base for inclusion of Bennett and Angel in the weld department at this time, *viz*, because they performed weld work, while simultaneously excluding Altimus who also performed weld work. Indeed Altimus performed more weld work in the weld department, and far more regularly than had either Bennett or Angel in the same prelayoff period. Consequently I am constrained to reject Respondent's offered base for an initial listing at this time of Bennett and Angel in the weld department; noting further, that Respondent's avowed practice and procedure did not provide for any interdepartmental bumping on seniority

[53] E.g., the General Counsel does not appear to question the Employer's election at this time to retain H. D. Sheets, on seniority list of July 27 shown as hired in assembly, but listed in separate (normally) electrical department for the first time on the same August 28 list, despite Sheets' even lower seniority.

basis. Moreover, even with this listing of Angel in the weld department, it is seen to be but a surface presentment. Thus, for a time Angel continued to work wholly in the final department; and he worked at all times principally there, and by far (7 hours a day). Thus the General Counsel would have it concluded, and I am persuaded to find, that the above reduction of five welders after layoff notice actually (conservatively) had reduced the weld department work force as listed by at least 38 percent; and with reasonable exclusion of Angel who had theretofore performed little or no work in the weld department, and thereafter, at best, *very* limited work in the weld department, there had been more realistically a reduction of 41.5 percent.[54]

The same stands in ready sharp contrast with a simultaneous but 28-percent reduction in the assembly department. Especially is this so in the light of prior layoff practice which was collaterally to lay off the less-skilled employees first. It is acknowledged by Respondent that its summer buildup assembly hired were generally less skilled. Nonetheless, Respondent would explain the restricted number of assembly personnel laid off on this occasion *vis-a-vis* welders on the basis that Respondent, due to its unusual overexpansion, was then working two assembly lines through final; and thus it had retained more than the normal (one line) assemblers to handle that plant production circumstance in a fiscally sound way; in short, a managerial decision, seemingly not otherwise contested by the General Counsel, and with which, on this record, I find no quarrel. I shall not rely on such percentage comparisons. However, I shall continue to address the discrepancies of Respondent's position in regard to its welder force, otherwise.

In the week following layoff of August 31, Sherman was on 1-week vacation, long previously scheduled and authorized. Contrary to his prior assigned duties as a leadman[55] under which Sherman in the past had done irregular and limited production work himself, on his return from vacation, Sherman was required to regularly perform production work in the weld department some 6–7 hours daily. This requirement would continue until Carter's rehire on November 1. In the interim, it is clearly established on the record contrary to lesser summary recollections of Hays, that employees *outside* of the weld department regularly performed welding work in weld department for significant periods of time in the months of September and October,[56] extending even significantly after rehire of Carter on November 1 and Hickman on November 5.[57] Under such circumstances I find very little of persuasion in Respondent's additional urging that it is not shown to have rebuilt its welder work force in the interim.

Respondent would further seek to defend its layoff of *four* welders at this time because of a claimed existing weldment stockpile summarized by Hays overall as being enough for six trailer units. However, Sherman testified credibly that a stockpile of weldments was always desired, and 2–3 days supply, a weld department goal. Thus, a stockpile of weldments for six trailers was well within normal (even on four-a-day base) as related by Sherman; and certainly well within Cervi's confirmed goal of a desired week's leadtime. As to any suggestion in this record of a particularly excessive lead on running gear, I would only further observe the incompatibility thereof with Carter and Hickman (who worked running gear) being called in to work overtime, on *very* day of layoff.

The fact of the matter is that not only Sherman, but General Foreman Bon Tucker, at least at one point, have acknowledged their own prior evaluations expressed to Hays was that the layoff went *too* deep in the weld department for it to produce the weldments for the scheduled four trailer units a day, an evaluation I find otherwise fully supported on review of Respondent's own records and standards and which warrant ultimate finding there existed welder shortage.[58]

When Sherman, upon inquiry, made known to Blankenship his held view that the weld department had been cut too deeply to meet schedule, Hays called him to the office in early October and they reviewed the welder work force status. As earlier noted 65 man-hours were required per day, per established standard. Sherman was of the view he was one man short. Hays made it clear that Sherman could schedule Angel (listed in weld) 1 hour (but also) Altimus (not so) 6.25 hours (who Sherman was already partly using). Sherman has remained of the view that the weld department had been cut too deeply. I agree. With assignment of available hours to existing manpower it is then observed 61–62 hours at best were to be made available.[59] The same is but fur-

[54] With Bennett's exclusion who had not worked in the weld department at all for months, there would be seen a 45-percent reduction of the prior existing welder work force; and with a consideration of the Hull intervening termination the percentage reduction in welder force but grows.

[55] Sherman's job as weld leadman theretofore had included setup and check of the work of the welders; supply and check on parts and materials; and various production paperwork reports.

[56] Thus parts department employee (former welder) West worked some 100 hours in production welding, mostly in September, beginning almost immediately on September 6, and extending over the month through September 27. (Hays was observed to become defensively antagonistic on West's assignments.) Driver Shepard, who testified he had never worked in the weld department before, recalls he and driver Stafford worked about an average of 2–3 days a week from mid-September through December. Driver Stafford, in a 2-week period in late September–early October, worked 4–5 days a week in the weld department; and driver Callison worked 5 straight days, 8 hours a day, in the weld department in early October. I find none of these drivers had previously been assigned to work in the weld department. Hays' seemingly one-time assertion of seeing drivers work in the weld department in July–August was in any event self-contradicted of record and in conflict with other credited evidence.

[57] Carter recalled that on his return Stafford had worked for 2 weeks in the weld department, pretty steady. Hickman essentially confirmed that, after his return, drivers Shepard and Callison worked regularly in the weld department about 2–3 days, and Stafford about every other day.

[58] Under the September standard, 16.25 hours were required to produce the weldments for a trailer unit. Goal of four such units a day for the weld department required 65 man-hours a day in the weld department to reach September goal (over 19 workdays) 1,235 hours would be called for. In September only 995 were expended. Since one man in this work period would account for 152 hours on 8-hour per day basis, and since the difference between standard projection and actual was 240 hours, a clear one and one-half man shortage is shown present *without* consideraion of the identity of the manpower assignments to the weld department (e.g., Bennett from maintenance) and supplemental assignments made in this period, e.g., the 90–100 hours of West alone.

[59] Bennett (8), R. Sherman (6–7), McGuire (8), Hurley (8), Angel (1), Delong (8), K. Sherman (8), Detwiler (8) and Altimus (6.25), a total of

Continued

ther confirmed by a comparison review of unit goal reached per workday in each month with welder force for that month. Thus, Respondent did not come closer than 3.7 unit average in the period February–May with 10 welders. Indeed, Respondent did not reach 4 unit average until June with 13 welders (excluding Bennett, Sherman, and Angel), though it thereafter sustained 4.8 with 12 welders in July (excluding the same); and achieved 5.3 in August with 13 (excluding the same and Altimus). Finally, Respondent has advanced consideration of other general managerial principles, e.g., welders increased production on learning curves, again with which I have no quarrel. To be sure it attained to 3.8 and 3.9 unit average in September and October. The unconvincing feature of this argument is not just the weakness of the generality thereof in the face of Respondent's own established standards and specific records, but is fatally defective in not ruling out the ongoing contributions of nonweld personnel to weld overall production.

This matter need not be further belabored,[60] as I am convinced, and I find, that though Respondent has shown that a layoff at this time was economically dictated, Respondent has failed to show with convincing evidence that it would have laid off all four welders in any event; indeed its own records and the record herein considered as a whole have rather fully convinced me that Respondent, following its layoff of four welders, had remained demonstrably at least one welder short throughout; and its transfer and substitution of a maintenance man (Bennett) for another welder at this time flew in the face of its own prior practice. I thus further conclude and find that Respondent has not established that it would have laid off the two most senior welders, in any event, who not unrelatedly are observed to have been the two most active, vocal, and visible union leaders, Greg Carter and Hugh Hickman. I am not, however, similarly persuaded as to McCoy. His union activity was seemingly no more than Hovarter whose layoff is unquestioned. Economic justification was shown for Altimus' retention. Rather I am convinced and I find that, on the basis of Respondent's production orders, records, standards, and plant history shown, it reasonably is made to appear that, in its showing that economic grounds existed for a retrenchment from its overexpanded plant work force at this time in any event, Respondent has sufficiently shown similar grounds existed for a reduction of its expanded welder work force to the extent the same has not been shown, demonstrably and discernibly, as being discriminatorily motivated. For all of the above reasons, I therefore conclude and find that the selection and permanent layoff of welders Greg Carter and Hugh Hickman was brought on because of their active union adherence, and thus discriminatorily motivated in violation of Section 8(a)(3) and (1) of the Act. I shall, however, recommend that the complaint allegation, insofar as it also alleged the same as to Martin McCoy, be dismissed, as not sustained by the preponderance of the evidence.

D. *The Alleged Refusal To Bargain; The Requested Bargaining Order*

1. Unit issues

The parties stand in basic agreement on a production and maintenance unit as appropriate. However, the General Counsel and UAW would exclude four truckdrivers (Thomas M. Gage, L. Shepard, E. Callison, and T. Stafford), while the Employer would include them. The parties have also stipulated otherwise as to the basic composition of the unit as of August 16 except that they have further reserved on the placement within the unit of two additional employees, K. Wogoman and R. Winebrenner, whose status appeared questioned on the basis of being temporary summer help students who lack a community of interest with unit employees and thus whom the General Counsel and UAW would exclude, but the Employer, in disagreement, include. UAW has additionally contended that one driver, Thomas M. Gage, should be excluded in any event as a supervisor; and the General Counsel has contended as to K. Wogoman that the status of the evidence offered on K. Wogoman does not permit inclusion. The Employer would include both Wogoman and Winebrenner.

The record reveals that Thomas M. Gage has been employed by the Employer since 1976, but also that Comet has leased required trucks and trailers from Gage Transport Company (of which Thomas M. Gage is president) since January 1, 1978, under written lease. Gage Transport Company is paid a brokerage fee for the service. Gage maintains a desk on Respondent's premises, but no office presently elsewhere though apparently such was planned at time of hearing. Driver applicants have been brought in by Gage, are tested as to driving ability by Gage, who makes recommendations to Dorgan as to hire. Gage's recommendations have always been followed. While driver Shepard has testified that he may select a job, e.g., freight pickup, on the basis of his seniority, he also testified that Gage is like a dispatcher who tells the other drivers where to pick up the freight or what order to take, and that Gage (who is the most senior driver) may assign certain work to himself. Dorgan, however, testified credibly that he supervises the drivers (as well as five material handlers) and assigns work to Gage who relays it to the drivers, with much of it being established (presumably on basis of seniority choice). On the entire record I conclude and find that drivers theretofore had tneir own seniority separate from other unit employees and were not previously represented on the Shop and Safety Committee as other employees were.

61–62 hours, still daily short of 65 per standard. Even then I hasten to add the same does not take into account the transferred (use of) Bennett, the altered use of Sherman in production, the increased use of Angel and Altimus, and the supplemental regular assignments of West and the three truckdrivers.

[60] Respondent (and UAW) have advanced a number of documents/contentions which in my view are more related to an issue of a need for a layoff, or for such at a particular time, rather than materially bearing on the alleged discriminatory selection of individuals. Contentions and arguments of that nature, which are not recited herein, have been duly considered and found without merit on the issues presented. In that connection, however, I need not reach nor do I evaluate the UAW claim that discrepancies and inconsistencies in records advanced and relied upon by Respondent herein are of such nature as to warrant rejection of Respondent's defenses in their entirety.

The drivers involved herein are essentially over-the-road drivers who clearly possess the functionally distinct skills usually to be found associated therewith. Thus, they transport trailers when produced interstate to various delivery points in distant cities in the Midwest or central States. They also pick up freight (materials and supplies) from out-of-state locations and return it back to the plant. They hook up and unhook trailers, and may also occasionally unload freight at the plant, as the material handlers normally do. However, on such occasions, the drivers have usually arrived at off hours for the plant employees and usually do so as a matter of their own convenience in order to expedite moving on to the next assignment. They are not paid extra for this work. The drivers usually leave at midnight to pick up freight, and between midnight and 3 a.m. to deliver trailer units, but may perform their duties at any hours of the day or night. While the record reveals that Dorgan supervises both the drivers and material handlers (and office clericals) the over-the-road drivers (excepting Gage) are usually away from the plant without direct supervision.

Unlike the production and maintenance employees who punch a timeclock, essentially work one shift (e.g., 6 a.m. to 2:30 p.m.), may occasionally work a Saturday in the summer, are hourly paid and receive overtime pay, the drivers do not punch a timeclock, are paid on a mileage basis, do not receive overtime, essentially control their own worktime, and frequently work Saturday and Sunday.

There have been no transfers of plant production employees to become drivers, or vice versa. Prior to August 31 drivers otherwise did not perform any production work in the plant, and though certain drivers in late August–early September have worked in the plant, e.g., in a week to 10-day period on painting the restroom and putting up a lunchroom wall, the General Counsel convincingly argues that the use of three of the drivers otherwise regularly on weld work (as found above) was but part of Respondent's discriminatory elimination of union activists Carter and Hickman, and should be substantially discounted on that account. I agree. I observe in any event that essentially all of their work in the plant postdated union demand for recognition made on August 16.

While paid on a mileage basis for performance of normal driver duties, drivers also have an hourly base rate established at which they are paid if load/unload duties are excessive (itself very unusual). Drivers have received pay increases at the same time as the Employer's other unit employees. However, their contact with plant employees is shown minimal, as they usually only walk through the plant to the office to pick up their paperwork, and, contrary to urging of the Employee, evidence of record as a whole (including credited testimony of driver Callison) warrants finding that the drivers do not eat meals in the plant; and they do not have their own lounge but perform their required paperwork in the truck. As earlier noted, I am convinced on this record that drivers have heretofore had their own seniority separate from other employees; and I am also convinced they were not previously represented on the Shop and Safety Committee. Respondent would have much made of the fact, which I find, that Carter asked drivers Callison and Stafford if they were going to sign a card; and they did not. Respondent would argue (presumably) same as being indicative that extent of organization was the controlling factor in the Union's seeking to exclude drivers.[61]

There has been no history of collective bargaining at this plant. The case situation presents the oft-repeated one of presence of a dual community of interest of truckdrivers with some factors supporting inclusion and some exclusion. However, I am fully convinced that analysis of all the above facts warrants overall finding that the truckdrivers here are essentially a functionally distinct group possessing different skills and qualifications from production and maintenance employees; that they normally have little or no contact with other employees, have substantially different work hours and conditions, are paid differently, and do not perform production work on a regular or substantial basis. Accordingly, I shall exclude them. *Pacemaker Mobile Homes*, 194 NLRB 742 (1971).[62] In view of findings above reached I need not address other individual issues in regard to Thomas M. Gage as a supervisor, and/or his business relationship being such as to warrant conclusion he lacked community of interest with other unit employees because of unique or special relationship to Employer.

As to the status of R. Winebrenner the same need not be belabored. I find that R. Winebrenner, after completing 2 years of college, was hired on May 9 as summer help, with Winebrenner stating intention of returning to college to the Employer and the Employer's approval of hire of Winebrenner being as temporary summer help. While it is true that Winebrenner subsequently inquired of permanent employment opportunity with the Employer in view of an anticipated operation that would preclude his return to college that year, it is clear of record as well that the conversation thereon with a supervisor did not occur until clearly after the Union's demand for recognition. I thus conclude and find that R. Winebrenner is to be excluded as occupying student temporary summer help status and thus at that time lacking community of interest with the other production and maintenance employees. *Crest Wine and Spirits, Ltd.*, 168 NLRB 754 (1967).

The matter of K. Wogoman, as it turns out on this record, presents a different issue, one of identification and thrust of evidence. From the July 27 seniority list it is clear two individuals named Wogoman with first initial "K" were hired. Thus Kirby Lee Wogoman (with clock number 20729) and Kirk A. Wogoman (with clock number 20730) are (both) shown hired on May 17 in assembly. However, Kirby Lee Wogoman is there additionally identified as being summer help, and Kirby Lee Wogoman is also shown to have quit on August 24. There is no such notation as to Kirk A. Wogoman. On the employee list by seniority within classification posted

[61] I reject any such reliance on the discourse between Albright and Gage on July 31 which was a confrontation between them and at a time when Gage's driver status (I find) was unknown to Albright.

[62] See also *Kalamazoo Paper Box Corp*, 136 NLRB 134 (1962); and *Ballantine Packing Company, Inc.*, 132 NLRB 923, 925 (1961).

August 28, a K. Wogoman appears listed under assembly. Contrary to urging of the General Counsel and UAW the single K. Wogoman reserved is not reasonably shown to be summer help (like Winebrenner) nor does the thrust of the evidence show K. Wogoman to be other than an assembly employee on August 16. In agreement with the Employer I shall include K. Wogoman.

2. The majority status; the issues of validity of the authorization card designations

As of August 16 I find that there were 100 employees in the appropriate unit. As of August 15 the UAW had in its possession 62 executed single-purpose authorization cards from employees in this unit, a clear numerical majority, if the cards are shown to be valid designations of the Union to represent the employee signers. With one exception, all the above single-purpose card authorizations were authenticated properly by the direct testimony of either the employee card signer, or by the solicitor to whom a filled out and signed card was returned by the card signer, cf. *McEwen Manufacturing Company*, 172 NLRB 990, 992 (1968), 419 F.2d 1207, 1209 (D.C. Cir. 1969), cert. denied 90 S.Ct. 1120 (1970). The one exception thereto was a card purportedly signed by Roger Lee White.[63]

At the time of the hearing, Roger Lee White was not amenable to effective subpoena process, since he no longer resided at last known address when served and his present whereabouts represented as being presently unknown to the General Counsel, and presumably unknown to the Respondent as well by its silence. In those circumstances, the General Counsel introduced certain formal documents obtained from Respondent's employee personnel file maintained for Roger Lee White; thus forms I conclude reasonably to be found to bear authentic signatures of White. The General Counsel has urged that a signature comparison be made by this fact finder, and that the card of Roger Lee White be also found an authentic execution and valid designation by White on the strength of the holding similarly made in *Cato Show Printing Co., Inc.*, 219 NLRB 739, 756 (1975). Analysis and comparison of the signatures on the documents thus provided (a W-4 form, State of Indiana Withholding exemption form, and an application for life insurance form) with the signature of the purported authorization card of Roger Lee White reveals all signatures on all four documents readily appear to have the same distinctive characteristics which circumstance, along with consideration of the source of compared documents, convinces me that they were all signed by the same person, Roger Lee White. I further conclude and find it may be reasonably presumed from the above that the card was signed by White on the date affixed thereto, namely July 31.

Respondent asserts generally in brief that it has shown that Albion employees signed their UAW card for only a National Labor Relations Board election. In support Respondent has otherwise made certain specific assertions in regard to the testimony of James L. Brown, Craig Ball, Robert Feightner, Donald Edsall, Skip Altimus, Tony Angel, Mike Bennett, K. Bortner, Kerry Sherman, Randy Gunder, and D. DeLong, which are considered *infra*. Respondent also argues that the cards of a minimum of 8 (identified as (B) Leitch, Randy Gunder, R. Jones, D. Deveau, K. Smith, (T) Swihart, B. Leslie, and M. Cline), and a maximun of 13 (remainder unspecified) were signed by employees present at a union meeting of July 31 at Albion Park where Albright told employees that the cards would be used for an election. Respondent contends that the above 18 named employees as a minimum were told by Albright that their card was for a vote or NLRB election and that they signed their cards for that single purpose.

As noted, the authorization cards used herein were all single-purpose cards of nature: "stating clearly and unambiguously on their face that the signer designated the Union as his representative." The Supreme Court has stated in regard to such card usage in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 606-607 (1969), in affirming the Board's *Cumberland Shoe* doctrine the following:

> In resolving the conflict among the circuits in favor of approving the Board's *Cumberland* rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election. Elections have been, after all, and will continue to be, held in the vast majority of cases; the union will still have to have the signatures of 30% of the employees when an employer rejects a bargaining demand and insists that the union seek an election. We cannot agree with the employers here that employees as a rule are too unsophisticated to be bound by what they sign unless expressly told that their act of signing represents something else.

The Board's *Cumberland Shoe* doctrine[64] essentially is that if the card itself is unambiguous on its face it will be counted, unless the employee was told the card was to be used *solely* for the purpose of obtaining an election. However, the Board's *Cumberland Shoe* doctrine, as earlier applied by the Board, itself provided for rejection of any card where the employee card signer was told in either specific terms, or in general assurances that were susceptible to such interpretation or inference, that the card would be used only for the purpose of getting an election. In its approbation, the Supreme Court joined the Board's own caution that a mechanistic approach by the trial examiner (now administrative law judge) is to be

[63] Respondent's attack upon printed card of Keven Ellet has been essentially heretofore considered (along with that of R. Marks), and as has been shown *supra* at fn. 8, is under existing Board authority seen to be without merit. *Id.* at 993.

[64] *Cumberland Shoe Corp.*, 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965), reaffirmed *Levi Strauss & Co.*, 172 NLRB 732 (1968), enfd. 441 F.2d 1027 (D.C. Cir. 1969).

avoided. Thus the total context must be viewed for presence of evidence that the language of such card has been (as now stated by the Supreme Court) "deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature." While acknowledging such, the General Counsel would (correctly) have it be observed that a subjective motivation of the employee or the latter's afterthought is a wholly immaterial consideration, *Federal Alarm*, 230 NLRB 518, 521-522 (1977).

Finally, a significant beginning observation point is the Court's delimitation of the parameters of its approval of the Board's *Cumberland Shoe* doctrine to factual matters earlier considered by the trial examiner and described in the Court's own footnote 5, to wit:

> Accordingly, I reject Respondent's contention "that if a man is told that his card will be secret, or will be shown only to the Labor Board for the purpose of obtaining election, that this is the absolute equivalent of telling him that it will be used only for purposes of obtaining an election."
>
> * * * * *
>
> With respect to the 97 employees named in the attached Appendix B Respondent in its brief contends, in substance, that their cards should be rejected because each of these employees was told *one or more* of the following: (1) that the card would be used to get an election (2) that he had the right to vote either way, even though he signed the card (3) that the card would be kept secret and not shown to anybody except to the Board in order to get an election. For reasons heretofore explicated, I conclude that these statements, singly or jointly, do not foreclose use of the cards for the purpose designated on their face. [*Id.* at 607.]

From the foregoing it is readily apparent that to the extent Respondent would rely on a mere reference of Albright, Carter, Hickman, or any other card solicitor (essentially) that the card would be used to get an election, the same is wholly without any merit. I now turn to other specific contentions of Respondent.

At the outset of the hearing Albright had testified that he specifically recalled telling the employees assembled at Carter's home on July 23 that their signing of an authorization card would indicate their desire to have the UAW represent them with their Employer. Albright was corroborated by Carter whose recollection further specified that they were told the cards were going to be used to show a majority standing, at which time a letter would be sent to the Company asking them to recognize their majority status; and that Albright had also told them that if the Employer refused, the NLRB would be petitioned for a vote. Hickman corroborated that they were told the cards were an authorization for the Union to be their bargaining agent. Hickman also recalled that Albright said that when a certain percentage (Hickman recalling it as 50 percent) of the cards were delivered to him (by the employee organizing committee) that he would petition the Company to recognize the UAW, telling the Company they had so many cards signed. If the Company did not recognize the UAW, the cards would be used to petition the NLRB for a vote. Called as a rebuttal witness when certain of his remarks made at a latter organizational meeting held at Albion Park were questioned by Respondent, Albright further then testified in amplication: that he at outset told these employees that the policy and practice of the UAW in conducting an organizing drive was that UAW cards were specifically for recognition; reconfirmed he told them that when they signed a UAW card it was a desire on their part that the Union represent them; that he explained the assistance letter (notification) that he would first send to the Company about the organization committee before the campaign was to start; that as the cards came back and they gained a majority which he explained to them was *50* percent, *plus one or more*, that he would send the Company a letter for recognition, asserting the Union represented the majority of their employees, and asking to be recognized to negotiate and bargain on wages, hours, and working conditions and employment; and that should the Employer be unwilling to recognize the UAW, they would be left with no alternative but to then petition the NLRB to have them conduct an election. Randy Marks, also present and found to have validly signed a card at this meeting, recalled significantly that they might not need to have an election if enough people signed. Respondent's witness Gunder was evasive when questioned as to what he recalled of this meeting, and in any event in sum has testified but that he could not remember anything of it. The weight of credible evidence wholly convinces me that Carter, Hickman, and all other employees in attendance (including Gunder) were told nothing that detracted from what the card on its face unequivocally stated; that they were also told of the procedures that the UAW would follow in the campaign to attain recognition, including that there would be letter notification to the Employer of the start of a campaign by an employee organizing committee; demands for recognition and bargaining to be made of the Company upon obtaining a majority, and that the cards would be used to support a petition for an election if the Employer refused recognition claim, all procedures which the Union subsequently followed herein. Albright testified that he subsequently held three union meetings, the first on July 31 at Albion Park, the second at the same location in the second week of August prior to the 16th, but with specific date eluding him, and a third on October 3 at another location. Albright testified that he always goes through the same routine of explanation at start of meeting which he did at the Albion Park meetings; that there were question-and-answer sessions, and that if asked he would have told employees they were not obligated to vote for the Union in an election. Albright, who relates he has conducted 20 organizational campaigns, categorically denied he told any employee at any time that the Union's authorization cards were just for an election; and that this is something he would never do.

Respondent asserts in brief that James L. Braun has stated he signed his card because *he was told* it did not obligate him to the Union; and that he was told that if

enough employees signed the card there would be an election. As to the latter, witness Braun testified that he was not promised an election, but was told that if there were enough cards there would probably be an election; that *nothing* was mentioned to him about being obligated in the event there was an election; but rather he was actually told by the card solicitor that the latter would like for Braun to sign this (card) if Braun would like to have the Union in; that Braun read both sides of the card he was given; that he was also given a union pamphlet and skimmed over it. Most significantly Braun then testified: "I wasn't legally obligated for anything, so I signed it." Braun signed and dated his card July 26, and was clearly unaffected in doing so by anything that might be shown to have transpired on July 31. I conclude that Respondent's contention that Braun signed a card because he was *told* it did not obligate him to the Union is without record support. I further conclude and find the card of James L. Braun to be a valid designation of the Union as his representative.

Respondent argues in brief that *Craig Ball* stated he signed his card for an election. Witness Ball testified at the hearing that he did not remember anything the solicitor said to him; that he read both sides of the card; and has related that he was never told the only purpose was to get an election. Respondent's attack upon the card of Ball is without merit.[65] Respondent contends in brief that *Robert Feightner* (a witness called by the General Counsel) stated he was told that if 50 percent signed cards, there would be an election, and nothing further; that Feightner stated he knew other people in the plant signed their cards *solely* for an election; and that he was again told the purpose of the card was an election; and his card did not bind him to the Union if he signed it. The facts are that Feightner has testified that he had approached Carter for the card; and that he could not remember anything in particular that was said to him by Carter at the time. Feightner read the card on both sides, and his card is dated July 26. Feightner has testified that he was not told the card was for an election; that he had assumed the card was to get an election; but also related that he had been told before signing the card that there would be an election if 50 percent of the employees of the plant signed union cards, but he did not identify by whom he was told the latter. However, Feightner has categorically *denied* that he was told it (the card) was *only* for an election; and record cited simply will not support Respondent's further urging that Feightner has testified that he knew other people in the plant signed their cards *solely* for an election.

Feightner also denied that he had told Respondent in a prior taped interview that the person who gave him the card at the time he gave it to Feightner had told Feightner that the card did not bind Feightner to the Union. When subsequently further questioned by Respondent concerning a purported transcript of the prior interview containing inconsistent statement there followed this colloquy with regard to it:

> Q. Do you remember me asking you the person who gave you that card, at the time they gave it to you did they tell you what they were going to use the card for? Do you remember me asking you that question?
>
> A. Yes.
>
> Q. Do you remember your answer being well, they said it's just survey information of what the binder wants. Do you remember making that reply?
>
> A. What the binder wants? I don't believe I said that. I don't remember that.[66]
>
> Q. Do you remember me saying that they told you that card did not bind you to support the union?
>
> A. I don't believe it did bind me to support the union.
>
> Q. And your answer was yes to that question that I asked you?
>
> A. I don't follow.
>
> Q. Okay, Mr. Feightner, I asked you the question if you were saying that they told you that that card did not bind you to support the union to which you answered yes.
>
> A. Yes.
>
> Q. Then my question: But specifically they said when they gave it to you that you sign it and it did not bind you to support the Union? In answer to that, again you reaffirmed that's the way I understood it.
>
> A. Yes.
>
> JUDGE ROMANO: What is your answer?
>
> WITNESS: I don't know that the union would come in automatically to be recognized.

The foregoing considered separately, or as a whole, does not warrant finding that prior to signing the above clear designation of the UAW as his collective-bargaining agent that Feightner had been told anything by a union adherent reasonably to be viewed as a clear cancellation of, and a direction to disregard and forget the language of the card itself. Rather, I conclude and find the voluntarily sought and freely executed card of Feightner was a valid authorization to the Union to represent Feightner in collective bargaining.

Respondent urges in brief that employee *Donald Edsall* stated he was told by the UAW agent the card was not for the Union coming in, but for a showing of interest (30 percent). Edsall's actual testimony was that the card solicitor (whom he could not identify) just handed him the card and asked Edsall if Edsall wanted to fill this (card) out, and Edsall said he would; and that: "He said

[65] Respondent introduced in evidence earlier statements of Ball given Respondent in preparation for this hearing. It is clear therefrom that Ball's earlier statement was a response to question posed to reveal subjective motivation at best. In prior statement given the General Counsel, Ball had confirmed that no one told him the only purpose of the card was to get an election.

[66] Witness Feightner subsequently explained that he was not aware of the term binder. The witness had not previously been shown the typed transcript nor consequently been afforded opportunity to raise question as to it, and/or propose correction of any claimed inaccuracy in transcription; and he also testified without contradiction that the tape recorder was not kept going throughout the interview. The said transcript of the interview was rejected when offered, placed in rejected exhibit file on request, but was subsequently withdrawn.

that this here was not saying that the Union was coming in but more or less that it was to let them know you was interested." There was no reference in Edsall's testimony as to 30-percent showing of interest, let alone use of his card therefor. Edsall also testified that he had read the card before he signed it; and Edsall specifically denied he was told the purpose of the card was just to get an election; indeed, he denied he was told the card would be used for an election or to get an election. Respondent's argument that Edsall was told by a UAW agent that the authorization card was not for the Union coming in is wholly without merit, as is its assertion that the solicitation was related to 30-percent showing of interest without evidentiary foundation. I conclude and find the card of Edsall was a valid designation of the UAW as his representative. Contrary to Respondent's urging, employee *Skip Altimus* testified that he was not sure if Carter told him the card was for an election or just to try to get the Union into Comet. Altimus otherwise testified that he had approached Carter for a card, that Carter told him to take it home and read it over, that he read both sides of the card and that he gave it back the next morning to Carter or Hickman. (The card is dated August 1.)

Respondent urged in brief that employee *Tony Angel* testified that Albright said at a union meeting at Albion Park that the cards were for an election. Angel's testimony was that there was some mention by Albright about an election, but that he could not remember Albright's words. Not insignificantly, Angel's recollections otherwise confirmed that Albright talked about getting enough cards signed, like a majority, and a letter would be sent to the Company saying there are a majority interested in a union.[67] *Kerry Sherman*, who related on reflection that he thought he attended three meetings, testified that at the first one at Albion Park that Albright said the card was to get a vote in the factory for the UAW. He also testified that at the second or third meeting Albright said they had been denied what they were after and that they were going to go for a bargaining order with the NLRB.[68] I conclude and find that the contested authorization cards of Altimus and Angel were each valid designations of tbe Union as their representative. Sherman did not sign a card.

Respondent contends employee *Mike Bennett* stated that Albright gave him a card at Albion Park and stated the card was so employees could vote; and that at a later meeting Albright changed his mind; and then told employees that he had no intention of letting employees vote; that *Darrell DeLong* also testified that he saw employees sign cards at the July 31 meeting; and corroborated Bennett that at a later meeting Albright said to those present, that since he had more than 50 percent, he had no intentions of a vote.

At the outset it is to be observed that it is uncontested that Bennett was on vacation from July 23 through August 2; and that he was personally aware he had missed a prior union meeting. I find that it was thus at the second meeting at Albion Park held about the second week of August that Bennett refers to in testifying that Albright asked if any of the employees there had not signed a card, to sign one so we could have a vote. However, Bennett also confirmed that Albright talked about sending a letter to the Company. Bennett was not positive about the exact wording Albright had used about the letter, recalling at first he was organizing and notifying them of that fact. Bennett did not think Albright said he had already done so, nor to his knowledge had referred to a letter to the Company to ask them to recognize the Union, but thereafter acknowledged that Albright had said he was going to send a letter to the Company notifying them of their results of what they had so far, that is, results of the membership drive so far. Bennett also attended the third union meeting at the Eagles Club on October 3. The weight of his testimony as to that meeting is that at that meeting Albright outlined the charges that had been made on the Company's actions, including the layoffs, and referred to Bennett by name in connection with his working in Weld, while welders were laid off, that they were taking the Company to court over it; and that Albright said in this meeting it was never his intention for it to come to a vote, that it was his intention to have the Company recognize the Union through the recognition cards that were signed; and that he said he wanted to get enough authorization cards to be signed that he could come in without a vote. Bennett also testified that while Albright had previously given Bennett a card at the Albion Park facility, Bennett did not sign the card; and that he remembered that the card said that he was signing authorization to be represented by the UAW, and it did not say anything about an election. I conclude and find there is nothing in Bennett's testimony, considered as a whole, that warrants rejection of any UAW authorization cards signed by others.

Darrell DeLong signed a card on July 30. Called as a witness by Respondent, DeLong testified that he was not told what the card's purpose was before he signed it. It is clear that DeLong initially designated the UAW as his representative. DeLong attended the July 31 meeting at Albion Park. He testified that at that meeting Albright introduced himself, said that some of the people had notified him that there was an internal shop move to obtain a union; and Albright told them (15–25 employees) that the purpose of the card was to obtain an election and

[67] Donald A. Brown who signed a card on July 26 testified that he was told by the card solicitor even before he signed a card that they would take the cards and give them to Albright; that Albright would write the Company a letter; and if the Company did not recognize the Union, they would take it to Indianapolis and have an election.

[68] Respondent argues that that which was denied was recognition, and the incident is significant inasmuch as it indicates the Union was going for a bargaining order before the August 31 layoff. This contention cannot prevail inasmuch as the second meeting at Albion Park was by overwhelming weight of evidence before demand letter was even sent on August 16, and a petition was filed before the August 31 layoff. It is clear and I find that K. Sherman attended three meetings, the third being at the "Eagles Club" on October 3, thus after charges had been filed herein and after much of the unfair labor practices found herein had occurred, and at which the same (I find *infra*) were reviewed with employees. It is clear from the entire record and I find that it was in that meeting that Albright said they were going for a bargaining order. This is not to suggest that UAW's pursuit of an organized majority and use of single purpose card was not pursuant to a foreplan to cover just such an exigency, if it were to arise.

then he answered a lot of questions, including (I find) that even if you did sign a card that you were not obligated to vote yes or no, for or against the UAW. However, significantly, DeLong confirmed that Albright told them that he would be asking the Company to recognize the Union if they got a majority support from the employees, to do so voluntarily without an election. DeLong testified he saw employees sign cards at this meeting, but could not recall any by name who did so. DeLong recalls that he attended a meeting a week or so later and at that meeting that Albright said that he had more than 50 percent of the cards, that he really had no intentions of using the cards to obtain a vote. However, DeLong again testified that at this second meeting Albright also told them he would be contacting the Company asking them to recognize the Union if he got a majority of the cards, later again clarifying Albright would contact the Company (to) have the Company voluntarily recognize the Union without an election. Review of the testimony of *Randolph Jones* who signed a card on July 25, *Eugene L. Deck* who signed a card on July 30, *Kelvin D. Smith* who signed a card on August 1, and *Terry Swihart* who signed a card on August 15 reveals nothing that would warrant rejection of their cards. I conclude the cards of Jones, Deck, Smith, and Swihart are each a valid designation of UAW as their representative. As to the remaining employees whose cards are sought to be questioned by Respondent on the basis that they were present at the July 31 meeting, none have additionally testified excepting Ron and Kevin Bortner and Randy Gunder. It is clear that properly authenticated cards executed prior to July 31 were unaffected in their original execution by any statements that might have been made by Albright (or others) on July 31. Included in this category are: executed cards of *James Owens* and *Steve Todd* (each dated July 25), and of *Denver Slone* and *John Meyer* (each dated July 26) properly authenticated by Greg Carter; and the card of *Ralph W. Detwiler* (dated July 25) and of *Reginald Lazar* (dated July 26), properly authenticated by Hugh Hickman. I find that they are valid designations of the UAW as their representative. As to the additionally questioned cards of *David Deveau* (dated August 1), *Mike Kline* (dated August 6) and *Brian Leslie* (dated August 15), who did not testify but whose card is each properly authenticated by Greg Carter, I would only additionally observe that absent a showing of some warrant therefor appearing from the testimony of Kevin and Ron Bortner and Randy Gunder remaining to be considered whose cards are also questioned by Respondent, there is no warrant to reject the cards of Deveau, Kline, and Leslie as valid designations of UAW as their collective-bargaining representative. (The record does not reveal that White attended or signed his card at the July 31 meeting.)

I thus find myself in essential agreement with the General Counsel and UAW observation that Respondent has presented essentially only two witnesses (Kevin Bortner and Randy Gunder) whose testimony might be viewed as raising issue in regard to statements of a representative or solicitors that authorization cards were to be used "solely," "just," or "only" for an election, or its equivalent. The General Counsel and UAW contend their testimony is incredible, on several scores.

Thus, the General Counsel contends (with much record support otherwise above shown) that the record is devoid of any credible evidence that any card signer was explicitly or even indirectly told at the time he was signing his card by a union organizer or card solicitor that his card would be used "just," "solely," or "only" to get an election, nor do the "totality of the circumstances surrounding the card solicitations add up to an assurance to the card signer that his card (would) be used for no purpose other than to help get an election." The General Counsel also contends that the stories of the only two witnesses of Respondent (suggestive of the contrary) smack of contrivance and are subject to serious credibility problems. The Charging Party additionally would have noted that the words "only" or "just" (as raised by these two witnesses) arose solely in the context of statements given to agents of Respondent many months after the events and in response to leading questions used by the agent; and in that connection would rely on Supreme Court holding that:

> We also accept the observation that the employees are more likely than not, many months after a card drive and in response to questions after a card drive and in response to questions by Company counsel, to give testimony damaging to the Union. [*Gissel, supra* at 606, 608.]

The Charging Party further contends that evidence of interviews conducted which is of record is clear indication of the way in which the questions were designed to sway the employees and put ideas in their minds. In addition the two witnesses were together at this interview and it is not clear which of them said what. In a seeming but not explicit concession of some infirmities in witnesses' Kevin Bortner and Randy Gunder evidence, Respondent has, in any event, not advanced contention in brief that Albright *in haec verba* told the employees the card when signed was to be "just," "solely," or "only" for an election. Respondent does advance contentions in brief that Kevin Bortner stated that at the July 31 meeting Albright *promised* the employees that he would take the cards to the NLRB; that Ron Bortner stated Albright said that if he got enough people to sign cards he would send them to the NLRB to get a vote; and that Randy Gunder stated that Albright said if a majority signed cards, he would go to the NLRB for an election, and then they would vote on whether they wanted the Union or not.

Leadman *Randy W. Gunder* attended three union meetings, *viz*, the meeting at Carter's home on July 23, and both meetings at Albion Park. Gunder did not sign a union card until the first meeting at Albion Park on July 31. Gunder acknowledged that he read both sides of the card that he signed; and that he was also given union literature, though he did not read it.

Greg Carter confirmed that he gave a blank card to Gunder which was returned to him after being executed by Gunder; and that he then gave the card to Albright. The card of Gunder is compatibly dated July 31. Carter

also testified that he gave a blank authorization card (and union pamphlet attachment) to both *Ron and Kevin Bortner*; and Carter authenticated the executed cards which both subsequently returned to him. The card of Ron Bortner is dated July 26, and that of Kevin Bortner is dated July 25. Ron Bortner confirmed that Carter had given both him and his brother a card in the employees' parking lot at the same time. Initially, Ron Bortner testified that Carter said that it (the card) was to see if we would get enough percentage of the plant so that we could get a vote to see whether we would get the Union in or not. However, thereafter, on cross-examination, Ron Bortner related that Carter had just said to take the card home, fill it out, and bring it back in the morning.

Ron Bortner acknowledged that he got a blank card from Carter; that he read both sides of the card; dated the card and signed it at home the following morning; and that he turned it in to Carter that morning when he got to work. Initially, Ron Bortner had placed such morning as being the very morning of the Albion Park meeting of July 31. However, by virtue of the date appearing on the card which he has acknowledged entering on the card, his own subsequent reflections, affirmances and then clarifications thereon, and the other above-described circumstances I am wholly convinced that Ron Bortner had earlier simply misrecollected the date he signed and turned in the card. I find that Ron Bortner, with some foreknowledge of the start of the organization campaign, had earlier discussed the authorization card with his brother Kevin; that he later obtained a blank card on the first day of employee organization at the plant; that he took the card home and signed it the next morning, July 26, and turned it in that morning to Carter, as is confirmed by Carter and by the card itself. In view of his contradictory recollections as to what Carter said to him, I am constrained, however, to place little reliance thereon absent corroboration, which, as we shall see, he did not receive from his brother.

Thus, Kevin L. Bortner testified that it was Hugh Hickman said it (the card) was to see if we could get a majority and have a vote; later clarifying that Hickman said to sign the cards if they wanted; and if they had a majority, they would have a vote for the Union. Thus, Kevin Bortner was supportive of what his brother initially (but not later) recalled, though inconsistently ascribing it to Hickman, not Carter. As was the case with his brother, Kevin Bortner also thought he turned in the card (which he had signed the day before) on the morning of the Albion Park meeting, July 31. He otherwise confirmed that he had taken the card and a union paper home; that he read the card on both sides, as well as the literature supplied; that he had signed the card the night he received it; and, as noted, it was he who put the date of July 25 on the card.

It is readily apparent that Kevin Bortner had likewise simply misrecollected as to the date of actual execution of his card. However the testimony of Ron and Kevin Bortner is inconsistent and contradictory of what they were told by the card solicitor(s), and I conclude their testimony thereon is shown to appear unreliable. But even were I to credit one (or all) version(s), such a statement(s) by either card solicitor would not constitute a clear instruction to disregard what the card itself clearly stated, anymore than the instruction to take the card home and read probargaining literature is suggestive of subterfuge. Indeed Kevin Bortner specifically acknowledged that no one told him to disregard what the card said; and that at home he had also read the (probargaining) union literature. Ron Bortner testified as well that he and his brother had discussed the card even before the day the organizing committee was to begin its push. I am thus wholly convinced on this record that the executed cards of Ron and Kevin Bortner were valid designations of the Union as their collective-bargaining representative when signed and turned in to Carter on July 26.

Ron Bortner testified that he attended the July 31 meeting, arriving with his brother Kevin, and remained there about 45 minutes. Ron Bortner, who could not recall whether Albright was responding to a question or not at the time, related *initially*, that Albright stated that the UAW authorization card was to get enough people signed up for it so he could then send it to the NLRB; and they could come back and get in touch with Comet and organize a vote to see if the Union would get in or not. He later clarified that Albright said when the UAW authorization cards were ssigned, he would mail them and a letter to the National Labor Relations Board asking them if they could hold a vote at Comet for the Union, to see if the Union was accepted or put down. He did not remember anything (more) being said about a letter being sent to the Employer. Ron Bortner did not recall seeing anyone sign a card at this meeting; and he later described his recollection of the start of the meeting as being with some questions thrown about by the group gathered there. Gunder's initial testimony was essentially corroborative of Ron Bortner. Thus it was that Albright had said if a majority of the people signed these cards then he would go or take them to the NLRB and the NLRB would present the employees with an election and they would vote on whether they want a union or not. Gunder further testified that Albright did not tell him that the card would be used for anything else. (Gunder, however, did not stay for the entire meeting.) Gunder confirmed that Albright had told them that he had sent a letter to the Employer that there was organization in the Company to vote for the Union; but he did not remember Albright saying he would be contacting the Company with another letter, though acknowledging he "maybe" could have. Gunder related otherwise that the employees in this meeting wanted to know what they were going to sign and Albright had told them. (A number of employees present did not ever sign a card.) Gunder relates he saw one or two sign cards at this meeting; later specifying that he was one and then acknowledging he was unable to identify any other. Gunder stated that he could not remember if cards were brought up in the next meeting. His testimony that he did not remember what was said at the meeting at Carter's house was, I find, simply less than frank, and was unconvincing.

In attempted rehabilitation, Respondent introduced in evidence a purported complete transcript of Gunder's

prior statement given Respondent in joint interview held with Kevin Bortner on February 28, 1980, Gunder's statement in part provided:

> Q. Now, at the time that the person, and I don't want to know their name, presented this to you, did he ask you to sign this card to have a union election?
>
> A. In a roundabout way, yea.
>
> Q. Did he say anything about let's sign the card; the card is to get a vote, to see if the majority of the people. Did he mention it was to have a vote to see if the majority of the people supported the company or the union.
>
> A. Yes. You can't do nothing unless you vote so you got to sign one of them cards so you can vote.
>
> Q. Did they tell you that?
>
> A. Yes. They explained it to us.
>
> Q. Did they tell you that this card would be used for anything other than a vote?
>
> A. No.
>
> Q. They specifically said it would be used for a vote.
>
> A. Just a vote.
>
> Q. When you signed this card, were you under the impression that there would be a vote taken?
>
> A. Well, the majority would have, you know, the majority signed this then there would be a vote.
>
> Q. Was anything mentioned about this card other than it being used for a vote?
>
> A. Not that I can recall.
>
> Q. It has been my experience over a number of years that I have been doing this stuff, employees or after presenting one of these and being told "hey, look, sign the card and we want to have a union election." The card would be for a union election. OK? That's the point that I'm trying to get to you. The majority of the cases I've found they are told that that card is to be used as an election. OK? Or a vote.
>
> A. Right.

In explicating the meaning of his above answer "Just a vote," Gunder *first* stated, "[T]hat's as far as I knew what it would be for, just a vote for the Union whether it would be in or out," clearly indicating it was his subjective assessment or conclusion of what had transpired there. However, when then questioned specifically whether the word "just" was Albright's word or his own, he then responded it was his (Albright's), though his later attempted recitement of what Albright had actually said was unclear, and thus unconvincing.

Kevin L. Bortner also recalled being at the Albion Park meeting of July 31, but for about one-half hour to 45 minutes at most. His *initial* testimony was also essentially corroborative of the *initial* testimony of Ron Bortner and Randy Gunder, to wit: I think the only thing he (Albright) said was just that it (card) was to see if we could get a majority to have a vote. Kevin Bortner otherwise related he was there at the start of the meeting; recalled that there was a lot of yelling; and he relates that Albright had held up a card and said something about getting a majority for them, that they were having the meeting to inform more people about the Union so they could get more people to sign the cards. Kevin Bortner testified that Albright also told them that he would take the cards to the Board for a percentage, or something (later confirming Albright's reference was to *if he got a majority*) and then the Board would contact Comet, something about that. When questioned whether Albright had discussed obligations to the Union, Kevin Bortner testified that Albright said that if they did sign the card to get the election, that if they did have an election, they necessarily would not have to vote for the Union. On cross-examination Kevin Bortner related he thought the discussion on the cards was first brought up by a question, but repeatedly could not recall it, though he eventually testified that a *lot* of the employees had asked if they signed a card, if they did get an election, if they would have to vote yes for the Union; and that Albright had answered: "No, that you wouldn't have to." On an other occasion, Kevin Bortner acknowledged that he could not recall exactly what Albright had said in response to the question about the cards. When asked generally for his recollection of any other questions about the cards, Kevin Bortner responded with assertion that it was *just* made clear that they were for a vote only. It was only after specific question was finally posed by the Union whether Albright had said the cards were only for an election that Bortner did then make assertion that Albright had specifically *said* the cards *were only for an election*. The Charging Party promptly sought introduction in evidence transcript of prior interview by Respondent of witness Kevin Bortner (as noted, held jointly with witness Randy Gunder) at which point Kevin Bortner quickly recanted he probably might not have told that previously to Respondent. Kevin Bortner went on to affirm he was questioned and had replied to questions on that occasion as follows:

> Q. The person who presented that card to you, they tell that that card would be used for a vote or for a union election?
>
> A. A vote.
>
> Q. Did they tell you that the card would be used for anything other than a vote?
>
> A. No.
>
> Q. Were you under the impression at that time and still are that the card is to be used only for a vote.
>
> A. Yes.

Bortner, revealingly in explanation of his assertion that Albright said it was only for an election, has related the same to earlier (and like) questions posed to Albright about a card signer's ability to vote either way in a future election, as instance(s) of Albright's stress that the cards were only for an election. (This is one of the factual matters in *Gissel, supra* that has been found not defeative of a valid designation.)

Kevin Bortner acknowledged that Albright had also encouraged all the employees to read the card before they signed it. When Bortner was asked what he recalled of the card he had earlier signed, he relates he believed it was just for a vote, to get a majority to see if we could

hold a vote. When shown the card at hearing (which says nothing of an election), and specifically upon reading the back he related, "This is a complete conflict with what they told us."[69]

Kevin Bortner recalled Albright spoke of sending a letter to the Company about the inplant organizers so they would be protected; but he did not remember Albright say he would contact the Company about the authorization cards. In that connection, however, Kevin Bortner also asserted that the following statement appearing in his transcript, to question posed, was actually an answer made not by himself but by Randy Gunder, to wit:

> Q. Did they tell you that it could be used for anything other than a vote?
>
> A. That's it. We signed these cards and the majority of them signed them that they will recognize you guys with a letter and you guys have to open it and read it, but they didn't say nothing about bargaining.[70]

It is clear from the above (whether it be Gunder's or Kevin Bortner's declaration) that there has been a still further corroboration (along with its own witness DeLong) of Albright's testimony, itself otherwise corroborated and supported, by still others, that in this meeting as well as other meetings he had told the employees that when they got a majority standing, he would send another letter to the Company requesting the Company to recognize the Union.

I have little doubt that, in responding to questions or otherwise, during the course of the Albion meeting of July 31 Albright may have stated to employees in substance and effect that the UAW authorization cards that employees were being asked to sign would be used by it to support a future petition for an election by the employees; and would be one in which they could vote the Union up or down. However, I am as well convinced that he said nothing to them in that meeting that was calculated to direct employees to disregard and forget the equally clear language of the card, so as to deliberately or clearly cancel the single-purpose authorization support which the Union was seeking from them. It follows from the above that there is no warrant to discredit what otherwise appears of record to have been valid designations of UAW as their representative by Deveau, Kline, Leslie, White and Ron and Kevin Bortner, indeed Gunder as well.[71]

3. The alleged 8(a)(5) refusal to bargain, and the remedial bargaining order issues

As of August 16, when UAW sent notice by mail to Respondent that the UAW had been designated by the majority of Respondent's production and maintenance employees as the exclusive collective-bargaining representative in respect to rates of pay, wages, hours, and other terms and conditions of employment, UAW had in its possession authorization card designations of such from 62 of 100 employees, a clear majority, in a production and maintenance unit of Respondent's employees heretofore found appropriate. I have considered all the contentions of Respondent as to asserted invalidity of certain of the card designations at length above, and found all such contentions individually and now collectively to be without merit. Thus, at the time the UAW had claimed majority and requested institution of collective bargaining, it was the exclusive collective-bargaining representative as evidenced by employee sentiment expression through a majority of valid authorization card designations. In refusing mail service of the UAW letter, anticipating such claims and demands were likely contained therein, Respondent has effectively refused to bargain with the Union.

Respondent has engaged in conduct with clear design to undermine employee interest in the Union. Thus, after first promptly and unmistakably making it clear to all its assembled employees on July 30, that its position was to be one of open hostility to the Union, it immediately set out upon a course of unlawful conduct that could have only been calculated and designed by it to undermine and thwart its employees' continued interest in and support of the Union.

Respondent's conduct has thus included *on the one hand* an unlawful restriction of and interference with the statutory right of its employees to self-organization of a union of their own choice, by Respondent's publication and/or maintenance of an unlawfully broad no-solicitation and no-distribution rule, and of unlawfully broad no-access rule; and essentially at the same time it discharged the two most active, most proficient card solicitors for the UAW, Greg Carter and Hugh Hickman, under cloak of present economic decline, but accomplished under plant circumstances such as are shown herein to have been not only discriminatorily motivated, but to have been accomplished under plant circumstances that would serve only as a daily and constant reminder to other employees that such prominence in union adherence and union affairs was disadvantageous to continued employment with Respondent; and indeed, even with rehire of Carter and Hickman, the discrimination has continued, in that they have been required since to accept employment

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[69] However, to be contrasted, it is observed that in interview transcript appears the sentence clearly attributable to Respondent interviewer and spoken in his presence: "Bob [Hays] is maintaining and the Company is that if you want the Union then you should have the right to vote on it, and that they have no right to force it down anyone's throat because you signed the card which says, in fact, it was for a vote only." There is thus serious question as to actual source of his erroneous recollection as to content of card at that point of time.

[70] The witness was interviewed in the presence of Blankenship and Plant Manager Hays, but with leadman Randy Gunder also present for interview.

[71] In reaching such overall findings I am not at all persuaded that the testimony of witnesses Ron and Kevin Bortner and of Randy Gunder were contrived. It is always a possibility that an employee may miss a spoken word, or if not present for an entire meeting, of course be absent when a material matter is related as is confirmed by others was the case. Though I have concluded that they were in part in their recollection in simple error, or in other part unconvincing, I have in other substantial areas found their testimony consonant with that of others and the record, as a whole, and to that extent, credible. In the light of the findings reached herein, essentially made on the weight of the credible evidence I need not reach or resolve the merit of any further contention that there has been an undue sway of these witnesses affecting their general credibility by interviews that are urged to be not merely investigatory, but impermissibly suggestive, particularly where there has been no unfair labor practice alleged in relation thereto.

without return of their full seniority and other rights and privileges.

Respondent, *on the other hand*, announced first on August 7 to the Committee, and published thereafter to all employees its own present extension of a formal recognition of the Shop and Safety Committee as the representative of its employees in regard to matters pertaining to safety, compensation, employee benefits, disciplinary procedure, etc. Though it had had some prior dealings on certain such matters from time to time, this employee committee was a labor organization whose own initial formation and structure Respondent had initially controlled, and whose operations since have been shown above to have been in practice wholly dependent on Respondent for support and very call; and indeed was one which, under those circumstances, I further find it had suffered to lapse into a 3-4 month period of inactivity before Respondent resumed a meeting call of August 7.

Following the advent of the Union, in the same handbook publication, Respondent told employees that it would meet monthly with the Committee and urged its employees to supply their input on the above subjects to that employee representative. Respondent thereupon, in subsequent months, has met monthly with the Shop and Safety Committee; has upgraded its dealings with it to cover a broad gamut of collective-bargaining subjects, leading eventually to include a discussion and agreement on a full wage benefit package. Respondent has done so though that labor organization (committee) had never claimed or demonstrated that it represented the majority of its employees; had never sought recognition as such; and had not requested bargaining. In the interim Respondent gave the Shop and Safety Committee continued support and assistance in the form of paying employees for their attendance at meetings and hearings, and supplying it clerical and other support in formalizing for the first time by plantwide secret ballot its continued representative membership, many of whom in the past and present had been themselves UAW supporters. At this time of heightened bargaining it regularly had typed and posted the minutes of the Committee's meeting and accomplishments; with clearest message to employees that representation by the UAW was unnecessary as presaged on July 30.

The unfair labor practices which I have found were committed by Respondent in this period are serious unfair labor practices. It is obvious they have impeded the Board's preferred election process after it was begun by the UAW in this matter. Worse still, it has been found that Respondent has once before similarly interfered with the self-organizational activity of its employees by initiating, sponsoring and promoting The Shop Committee during the Teamsters Local 414 organization in 1976, and thereafter rendering it unlawful aid, assistance, and support.

In my view the above unfair labor practices are both serious and are of a nature in combination to have a lasting effect upon employees, and to tend to undermine majority strength and to make the more unlikely and improbable the holding of a fair election among Respondent's employees. I thus conclude and find that a bargaining order is both necessary and appropriate herein in order to protect the majority sentiment expressed initially through UAW authorization cards, and to otherwise adequately remedy the effects of all the violations found.[72] In that connection in view of the magnitude and scope of this course of conduct, which as noted I have concluded could have been only calculated to destroy union support, including majority representation of UAW, I further find that from on and after demand for recognition date of August 16, Respondent has refused to bargain with UAW as the collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act. I am not, however, convinced that Respondent has independently violated Section 8(a)(5) by a unilateral action in publishing the Albion employee handbook as such in late August. I am rather convinced that the same was long in the making and was essentially solidified when reviewed with the Committee on August 7. However, an appropriate remedy of its unlawful provisions, including the unlawful support and assistance it provided to the Shop and Safety Committee, will be provided hereinafter.

CONCLUSIONS OF LAW

1. Comet Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and Local 414, Agricultural Implement Workers of America, UAW, and Local 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and The Shop Committee and/or the Shop and Safety Committee are each and all labor organizations within the meaning of Section 2(5) of the Act.

3. By discriminatorily discharging its employees Greg Carter and Hugh Hickman on August 31, 1979, and by refusing thereafter to reinstate them to their former positions of employment with their full seniority and other rights and privileges, Respondent has engaged in conduct in violation of Section 8(a)(3) and (1) of the Act.

4. By initiating, forming, sponsoring, and promoting The Shop Committee in 1976 and by thereafter rendering it unlawful aid, assistance, and support and otherwise interfering with the operation of The Shop Committee; and by controlling the formation and structure of the Shop and Safety Committee in 1978, and thereafter interfering with its operation; and by extending formal recognition to it in August 1979, at a time when it did not represent an uncoerced majority of employees, and urging its employees to utilize it as their representative; and by thereafter engaging in collective bargaining with it, and otherwise rendering it unlawful aid, support, and assistance, including paying employees for their attendance at meetings and hearings, by typing and posting minutes of upgraded bargaining, and by supplying it clerical and other support in formalizing its continued representative committee membership, Respondent has engaged in con-

[72] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 614-615; cf. also *Worldwide Press, Inc.*, 242 NLRB 346, 366-367 (1979), and *Teledyne Dental Products Corp.*, 210 NLRB 435 (1974).

duct constituting unlawful assistance and support and domination of The Shop Committee in 1976 and the Shop and Safety Committee in 1978 and thereafter, in violation of Section 8(a)(2) and (1) of the Act.

5. By publication and/or maintenance of an unlawfully broad no-solicitation rule and no-distribution rule, and of an unlawfully broad no-access rule, Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

6. All regular full-time and all regular part-time production and maintenance employees of Comet Corporation at its Albion, Indiana, facility; but excluding all truckdrivers, all office clerical employees, all salesmen, all professional employees, all guards and supervisors as defined in the Act, constitute an appropriate unit for purposes of collective bargaining.

7. Since on or about August 16, 1979, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, has been and is the exclusive collective-bargaining representative of the employees in the appropriate unit described in paragraph 6 above.

8. Since on or about August 16 and thereafter Respondent has refused to bargain upon request with the Union named in paragraph 7 above, in violation of Section 8(a)(5) and (1).

9. Except as found herein Respondent has not otherwise violated the Act as alleged in the complaints.

REMEDY

Having found that Respondent Employer has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent Employer having wrongfully discharged Greg Carter and Hugh Hickman on August 31, 1979, and thereafter refused to fully reinstate them, I find it necessary to order Respondent Employer to offer Greg Carter and Hugh Hickman immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges; and to make them whole for any loss of earnings they may have suffered by reason of unlawful discrimination against them. The backpay provided herein and any interest due thereon shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[73] I have found that a remedial bargaining order is warranted herein. However, I have also found that Respondent has unlawfully refused to recognize and bargain with the UAW since August 16. Inasmuch as other unfair labor practices are adequately remedied hereinafter I shall recommend that the remedial bargaining order provided herein be dated from August 16, 1979.[74]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[75]

The Respondent, Comet Corporation, Albion, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Publishing and/or maintaining and enforcing an unlawfully broad no-solicitation and no-distribution rule, and an unlawfully broad no-access rule.

(b) Permanently laying off and/or discharging employees because of their membership in, and activities on behalf of, the Union, and/or in order to discourage membership in the Union.

(c) Initiating, sponsoring, and promoting The Shop Committee at Albion; providing it unlawful aid, assistance and support; paying employees for attendance at its meetings; participating in its meetings; controlling attendance at its meetings; and in practice and effect dominating The Shop Committee at Albion; and from controlling the formation and structure of the Shop and Safety Committee; interfering with its operations by calling its meetings and urging and encouraging employees to support the Committee with collective-bargaining input; paying employees for attendance at its meetings, and its members for attendance at hearings; participating in all its meetings; providing it clerical and other support of typing and posting of minutes of committee meetings and accomplishments, and similar clerical support and assistance in formalizing its membership by plantwide secret-ballot election; and in collective practice and effect thus dominating the Shop and Safety Committee.

(d) Cease recognizing the Shop and Safety Committee as the exclusive collective-bargaining representative of its employees at a time when the Shop and Safety Committee does not represent an uncoerced majority of Respondent's employees in the appropriate unit described below.

(e) Cease refusing to recognize and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of its employees in the following unit:

> All regular full-time and all regular part-time production and maintenance employees of the Employer at its Albion, Indiana, facility; but excluding all truck drivers, office clerical employees, all salesmen, all professional employees, all guards and supervisors as defined in the Act.

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[73] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[74] In the light of Respondent's clear renewal of unlawful assistance and support of the Shop and Safety Committee commencing on August 7, I shall, as urged by the General Counsel and UAW, and is supported by the record, date the remedial bargaining order as of August 16, by which time UAW is shown herein clearly to have *attained to a majority* as well as requested recognition, *Cas Walker's Cash Stores, Inc.*, 249 NLRB 316, and see cases cited in fn. 3 (1980).

[75] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to Greg Carter and Hugh Hickman to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges; and make employees Greg Carter and Hugh Hickman whole in the manner described in the section herein entitled "Remedy."

(b) Withdraw all recognition from the Shop and Safety Committee with respect to representation of any of Respondent's employees in the appropriate unit described above; and disestablish it in regard to all collective-bargaining functions.

(c) Upon request, recognize and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of all employees in the appropriate unit described above, and, if an understanding is reached, embody such understanding in a written, signed agreement.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at Respondent's Albion plant facility copies of the attached notice marked "Appendix."[76] Copies of the notice on forms provided by the Regional Director for Region 25, after being duly signed by the Company's authorized representative shall be posted by the Employer immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaints be dismissed insofar as they allege violation of the Act other than those found herein.

[76] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgement of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT publish and/or maintain and enforce an unlawfully broad no-solicitation and no-distribution rule, and an unlawfully broad no-access rule.

WE WILL NOT permanently lay off and/or discharge employees because of their membership in, and activities on behalf of, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and/or in order to discourage membership in UAW.

WE WILL NOT initiate, sponsor, and promote The Shop Committee at our Albion facility; provide it unlawful aid, assistance, and support; pay employees for attendance at its meetings; participate in its meetings; control attendance at its meetings; and in practice and effect thus dominate The Shop Committee at Albion; and

WE WILL NOT control the formation and structure of The Shop and Safety Committee; interfere with its operations by calling its meetings, and urging and encouraging our employees to support it with collective-bargaining input; pay our employees for attendance at its meetings, and its members for attendance at hearings; participate in all its meetings; provide it clerical and other support of typing and posting of minutes of committee meetings and accomplishments, and similar clerical support and assistance in formalizing its membership by plantwide secret-ballot election; and in collective practice and effect thus dominate The Shop and Safety Committee.

WE WILL NOT recognize The Shop and Safety Committee as the exclusive collective-bargaining representative, at a time when The Shop and Safety Committee does not represent an uncoerced majority of our employees in the appropriate unit described below.

WE WILL NOT refuse to recognize and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of our employees in the following unit:

> All regular full-time and all regular part-time production and maintenance employees of the Employer at its Albion, Indiana, facility; but excluding all truck drivers, office clerical employees, all salesmen, all professional employees, all guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist UAW, or any other labor organiza-

tion, to bargain collectively through representative of their own choosing, and to engage in concerted activities for the purposes of collective-bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL offer immediate and full reinstatement to Greg Carter and Hugh Hickman to their former jobs or, if those jobs no longer exist, to a substantially equivalent job, without prejudice to their seniority or other rights and privileges; and WE WILL make them whole for any loss of earnings they may have suffered by reason of unlawful discrimination practiced against them.

WE WILL withdraw all recognition from The Shop and Safety Committee with respect to representation of any of our employees in the appropriate unit described above; and WE WILL disestablish it in regard to all collective-bargaining functions.

WE WILL, upon request, recognize and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of all employees in the appropriate unit described above, and, if an understanding is reached, embody such understanding in a written, signed agreement.

COMET CORPORATION